United States Court of Appeals
for the Second Circuit

APPENDIX

77-7037

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In The

United States Court of Appeals

For The Second Circuit

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NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
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JOINT APPENDIX - VOLUME 6

CARL E. PERSON
Attorney for Plaintiffs-Appellants
132 Nassau Street
New York, New York 10038

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
Attorneys for Defendants-Appellees James M. Roche, Frederic G. Donner, General Motors Corp. and General Motors Acceptance Corp.
345 Park Avenue
New York, New York 10022

HETZELT, WATSON, McGARVEY & HETZELT
Attorneys for Defendants-Appellees Hamister-Gillogly Chevrolet, Inc. and Niagara Frontier Automobile Dealers Association, Inc.
1904 Liberty Bank Building
Buffalo, New York 14202

JOSEPH C. TISDALL
Attorney for Defendant-Appellee Bob Bain Chevrolet
300 Statler Office Building
Buffalo, New York 14202

BRENNAN, CALLAHAN, TESSEYMAN,
ZELMAN, RUNFOLA & NOBLE
Attorneys for Defendant-Appellee Paul Batt Buick, Inc.
1360 Statler Hilton Hotel
Buffalo, New York 14202

SIDNEY A. WEISBERG
Attorney for Defendant-Appellee Paragon Oldsmobile, Inc.
225 Broadway
New York, New York 10007

BORINS & SNITZER
Attorneys for Defendant-Appellee Glen Campbell Chev., Inc.
1718 Statler Hilton Hotel
Buffalo, New York 14202

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confirming his telephone conversation with Nash on 7/11/66 and agreeing to supply Buicks to Nabcor at $65 over invoice on all Buicks except Rivieras, which were quoted at $100 over invoice (20074). On 7/18/66, Kutner wrote to Nash informing Nabcor of price adjustments if the cars bought by Nabcor were taken out of Kutner's stock already prepared for delivery (20075). On 10/7/66, Kutner wrote to Nash giving a breakdown of 1966-67 Opel prices, and stating that Nash, Kutner and Arnold Smerilson of Kutner were to meet several days later at the Yorktown Inn at noon to review everything in detail (20076).

(2) William Nash: Nash had had telephone conversations with Jerome S. Kutner, Vice President of Kutner and had set up the above meeting with General Manager Smerilson and Jerry Kutner, son of the owner. During the meeting, Nash talked about reselling the cars and about the selling of Nabcor franchises to auto brokers and they asked how Nabcor was doing.

(3) Jack Snyder: Snyder purchased cars from Kutner then, right before the Foy Buick refusal to deal, Kutner refused to deal with Nabcor (Tr. 100).

(4) Anthony Maiorana: AM went in person to Kutner's and spoke with Al Alberts, Sales Manager, who said he couldn't order any cars from the factory for Nabcor because he could not sent the name Nabcor in to the factory. He could give Nabcor cars out of Kutner's stock, however. Also, Nabcor could send in orders to Kutner which he would order in Kutner's name if he had any open stock orders (meaning orders which were not committed to any specific purchaser). Subsequently, because of a late delivery of a car, the Nabcor customer cancelled and Nabcor cancelled the order with Kutner. AM, FM and

William Nash went to Kutner's to pick up the last car. Jerry Kutner said that the cancellation was his reason for not selling any more cars to Nabcor.

(5) Frank Maiorana (cont'd): FM heard about the Kutner refusal to deal and went with AM and Nash to pick up the last car to be bought from Kutner. FM spoke with Jerry Kutner, who said that the Zone did not like Kutner selling cars to Nabcor and that the Zone had traced serial numbers of cars back to Kutner.

RAY LAKS BUICK OPEL and LAKS CHEVROLET CORP.:

(1) Dale Strimple: Ray Laks Buick-Opel is owned by Ray Laks, the son of Edward Laks, owner of Laks Chevrolet Corp. During 10/67-11/67, Strimple and Bolling went to Laks Chevrolet Corp. and met with Edward Laks, Ray Laks and Don Laks (another son of Edward, who worked for his father). Strimple and Bolling had specific orders for 5-6 Chevrolets and said they wanted to buy several hundred Chevrolets per year. Edward and Donald Laks agreed to sell Chevrolets, at $50 over tissue or established fleet prices. Also, Ray Laks agreed to sell Buicks, but Strimple and Bolling had no specific orders. Within a few days, Strimple got a telephone call from Donald Laks who said that they had talked with the Zone Manager and was advised by him that Nabcor would be in direct competition with Laks and that Laks would not get any fleet allotment to sell cars to Nabcor or General. Laks refused to sell the Chevrolets to General. He mentioned the BADA Bulletin dated 9/29/67 on Nabcor, General and other Nabcor franchisees. Also, he said that he had been at a meeting of dealers at the BADA about Nabcor and General. They knew that Nabcor and General did not have a fleet certificate. Strimple asked if he could get one, and Laks said go to GM. (See ¶ 1 of Strimple's foundation testimony above about his unsuccessful attempts to speak to Womack at the Buffalo Chevrolet Zone.)

LUBY CHEVROLET:

(1) Frank Maiorana: On 3/17/66, FM spoke by telephone with Fred Abrams, Sales Manager of Luby, and Abrams agreed to sell a minimum of 200 Chevrolets to Nabcor at $25 over dealer invoice and $25 less 1%. FM sent a letter to Abrams on the same day (20015). From 6/30/66 to 2/6/67 Nabcor bought 14 cars from Luby. On 10/7/66, Joseph A. Alvarez, Luby's National Fleet Manager, wrote to Mr. Gallagher of Nabcor confirming their telephone discussion that Luby has a 6-month backlog on Corvettes and, therefore, Luby cannot handle the Nabcor order (6000). During early 1967, Alvarez stopped dealing with Nabcor. He told FM that Mr. Luby cut Nabcor off because dealers were complaining and he was ordered by the factory not to sell Nabcor cars. Alvarez also said he was told that GM was shutting Nabcor off all over. FM spoke with Sales Manager Fred Abrams who said that the factory had called him and said not to sell cars to Nabcor.

(2) William Nash: Nash placed perhaps 8-10 orders with Norton Chevrolet in the fall of 1966. Then Norton sent the orders back to Nabcor, and Nash and Gallagher placed the 8-10 orders with Luby Chevrolet. Luby had held the orders for 8 weeks before advising Nabcor of the refusal. The Nabcor orders had been accepted by Alvarez. Immediately after the refusal by Luby, Nash spoke with Alvarez who said that franchised dealers had complained to GM about Luby's sales to Nabcor. GM told Alvarez to shut Nabcor off. GM said no more cars to Nabcor. Alvarez said Luby would not take a chance on his franchise only because of 15 cars or so. Thereafter, Nash and Gallagher placed the orders with Don Allen Chevrolet, to the extent not cancelled by Nabcor customers. Each of the refusals hurt Nabcor with its franchisees, and Nabcor started losing its franchisees immediately after the Norton refusal.

(3) Frank Maiorana (cont'd): Nabcor's sales subsidiary, U. S. Sales & Information Service, Inc. advertised new-car distributorships in the Wall Street Journal during 4/67, and Chester J. Luby, owner of Luby Chevrolet, answered an ad by letter dated 5/1/67 (20021-2). This was about 3 months after Nabcor purchased its last car from Luby. FM telephoned Luby at his office shortly after receipt of the letter and Luby said that this (meaning Nabcor) was that bootleg outfit. Luby said he used to sell cars to Nabcor until GM shut Nabcor down. GM won't let Nabcor get any cars, and the franchised dealers won't let Nabcor compete with them.

(4) Frank Maiorana (cont'd): After commencement of the 1969 Buffalo grand jury investigation, Luby sold 3 cars to Nabcor, from 6/8/70 to 7/2/70.

(5) Ernest M. Turco: From 12/11/70 to 1/18/73, Luby sold 3 cars to Nabcor East.

Documents: Pltfs: 6009-11, 6014-5, 6092-3, 6108-9, 6114, 6124, 6136-9, 6149, 6181, 20015, 20021-2, deal folders.

MARK BUICK CORP.:

(1) Frank Maiorana: Nabcor placed an order with Bano Buick for a 1969 Buick for Nabcor East customer Sarah Zielinski, Yonkers, N.Y. and the car was sold to Nabcor by Bano Buick on 1/25/69 (N-500, 5513, et. seq.). Nabcor sold the Buick to Nabcor East on 1/27/69 (N-500, 5513 et seq.).

(2) Ernest M. Turco: On 1/27/69, Nabcor East sold the car to Sarah Zielinski (NE-130, 9615 et seq.). Shortly after 7/3/69, the customer advised Turco that she brought the car in to Mark Buick in Yonkers for warranty

PITCAIRN OLDSMOBILE:

(1) Frank Maiorana: FM called Ted Pitcher, Manager of Pitcairn on or about 3/16/66 and Pitcher agreed to sell Oldsmobiles at $75 over invoice except the Toronado, which was to be $200 over invoice. FM asked Pitcher for a letter agreement, which Pitcher sent, dated 3/16/66 (20068). In the letter Pitcher said "At time of order I will need your General Motors Fleet Number". Pitcairn subsequently refused to accept any orders from Nabcor and FM called Pitcher, during 12-66-1/2/67, who said to FM that the GM Zone said Nabcor was bootlegging cars and Nabcor had no fleet certificate. The Zone said not to sell to Nabcor because it had no fleet number and the Zone would not supply an extra allotment of cars to Pitcairn to cover any sales made by Pitcairn to Nabcor.

Documents: Pltfs: 20068.

PLACHTER-SERUBO CADILLAC:

(1) Jack Snyder: Nabcor put orders into Plachter-Serubo but never got the cars (Tr. 80).

(2) Frank Maiorana: On 9/4/70, Peter J. Serubo, Vice President, wrote to Snyder confirming their telephone conversation of the same day, that Plachter-Serubo will supply 1971 Cadillacs at $500 over invoice. On or after 11/30/70, Nabcor franchisee Park Auto Sales obtained orders from 4 principals of D. Capponi & Sons, Inc. or Northeast Brick Co. for four (4) Cadillacs (20182). At least F. Capponi and Tribolatti each gave Nabcor a $700 deposit (20184). The four Cadillacs were then ordered by Nabcor from Plachter-Serubo during 1/71 (20182). About 10-15 Cadillacs were ordered by Nabcor from Plachter-Serubo during 1/71-5/71, but none were delivered.

(3) Anthony Maiorana: The customers called and wrote to AM during 4/71 demanding a refund and said that, because of the 3-month delay, they called the supplier, Plachter-Serubo, on or about 4/1/71, and Peter Serubo told them that he received the 4 Cadillac orders from Nabcor but had not ordered them from Cadillac and the customers probably would not get them, although if they ordered the cars directly from Plachter-Serubo he would order the cars. Another Nabcor customer, Ralph Triboletti, spoke with the Sales Manager who said the cars weren't ordered from GM and the 4 Nabcor customers probably would not get the cars, but that if the customers wanted the 4 cars, the customers should order them directly from Plachter-Serubo. AM called Peter Serubo during 5/71 who confirmed that he had said the foregoing to the Nabcor customers. The 4 Nabcor customers bought Cadillacs from Webb Cadillac in Jenkintown, Penn. (20182).

(4) Frank Maiorana (cont'd): During 5/71, FM called Serubo and demanded the serial numbers of the ordered cars. Serubo said that the Zone representative visited Serubo. Serubo said the Zone had said Nabcor had no fleet certificate and was bootlegging cars, and that Plachter-Serubo should not sell cars to Nabcor. Serubo confirmed that he told the Nabcor customers that Nabcor would not get the Cadillacs Nabcor ordered for them. FM then spoke with Plachter about the 4 Cadillacs ordered by Nabcor, which Plachter said he would not give. He said GM does not want us to sell cars to Nabcor and he does not want to jeopardize his interests. Nabcor can sue Plachter-Serubo if it wants. FM obtained statements from one of the four Nabcor customers (20182).

(5) Alexander T. Park: Approximately 6 prospective customers for Cadillacs told Park that the Service Manager of Plachter-Serubo told them

that if they buy their Cadillac from Park-Nabcor, Serubo will not service the cars for them.

Documents: Pltfs: 20018, 20182-4 and orders.

POLLINO BUICK-PONTIAC, INC.

(1) Frank Maiorana: FM called John Pollino of Pollino Buick-Pontiac on 8/27/69 and Pollino said he would sell Pontiacs and Buicks to Nabcor for $150 over tissue. Pollino said that Nabcor won't get them cheaper from any dealer. Pollino said that all of the dealers got together and had a meeting and at the meeting the factory told them what their costs were. Nobody would sell any cheaper to Nabcor. FM asked for a letter. The letter (20029) was mailed the same day, but Pollino changed the price on Pontiacs to $100 over invoice. Buicks stayed at $150. The prices quoted by Pollino were not fleet prices. This was the same unrealistic price policy which Al Wilson Pontiac gave to Nabcor at the same time. See AL WILSON PONTIAC and KRAUSE OLDSMOBILE.

(2) Anthony Maiorana: AM talked with an employee in the Pollino Service Department who said Nabcor would have to pay $150 over tissue and that Nabcor would find that everyone in the area would be charging the same amount. There was a meeting of dealers and the costs of the dealers in selling to Nabcor were explained to them at the meeting.

Documents: Pltfs: 20029.

QUEEN CITY CHEVROLET:

(1) Frank Maiorana: See ¶ 30-32 of foundation testimony above.

Documents: Pltfs: 20040, deal folders for N-510, N-511, N-527.

RAINES CADILLAC CO., INC.:

(1) Frank Maiorana: In 3/70, Ray Raines, President of Raines Cadillac, agreed to sell Cadillacs to Nabcor at $450 over invoice. Raines gave Raines order forms for Nabcor to use (20032+). No cars were ordered by Nabcor at that time. In early 1971, FM called Raines to order Cadillacs, but the order was refused by Raines. He wouldn't tell why he was refusing to deal but he admitted to FM that he knew the factory was cutting Nabcor off.

(2) Frank Maiorana (cont'd): During FM's initial conversation with Raines, Raines introduced his partner Harold Morrell, who was also a Vice-President in a local Long Island bank (Security Bank?) during 1966-7. Raines said that he, Morrell and Dick Haskell (of used car dealers Stern & Haskell) had been attempting in 1966 to sell new cars as an independent car dealer through discount stores on Long Island. Morrell said that the President of his bank was requested by GM and the Greater New York, Long Island and Westchester Automobile Dealers Association to refuse the requested financing, which was refused. The bank President was afraid to handle the financing. FM spoke later with Dick Stern, who told the same thing to FM. See foundation testimony above of PETER W. GORDON, Executive Director of the Greater New York Long Island and Westchester Automobile Dealers Association.

(3) Peter A. Gordon: See foundation testimony above relating to Raines' discount selling of new automobiles of any make and model. Also, Gordon testified that he knew Harold Morrell (Tr. 34), that Morrell was an officer in a bank on Long Island (Tr. 34-5) and that Morrell was a partner in Raines Cadillac (Tr. 35).

Documents: Pltfs: 20032-4.

NY ADA: Pltfs' Gordon Ex. 2 (NY ADA Bulletin # 9, dated 3/30/66), which states in part:

"NEW COMPETITION IN NASSAU COUNTY

"What may be a threat to the new automobile franchised dealer system has sprung up in Nassau County. A used car dealer, Flo-Ben Auto Discount Division, Inc. with Ray Raines and Dickey Stern as principals has opened an operation in the Floyd Bennett Shopping Center, Hicksville Road, Jericho.

"On a visit to the store they had on display a Mustang, two Volkswagens, a Triumph and an M.G. * * *

"A sign at the location reads as follows:

"FOR THE FIRST TIME ON THE EAST COAST

"Flo-Ben Auto Discount Division

"Brings to NEW CAR SALES

"The concept of mass merchandising at unheard of DISCOUNTS

"The car you see on the floor may be purchased for IMMEDIATE DELIVERY

"If you do not see the car you want the salesman will gladly quote a price on the car of your choice.

"OUR POLICY IS

"The Lowest Price One Price to All No Haggling Full Mfg. Warranty

"$290 Down - Balance in easy terms to suit your budget.

"BANK RATES".

RANDOLPH CHEVROLET:

(1) New Jersey Automotive Trade Association: Will testify that in the Spring of 1969 a bulletin was prepared by the ADA describing Nabcor

is in Nabcor's name and he won't honor it (Tr. 267-8, 275).

(3) Ranger Motors Corp., by Walter, Sales Manager: On 4/28/69, Walter told Jamele that he could not say whether any dealer meetings about Nabcor or Jamele had taken place (and why he could not have told Jamele), and that he had told Jamele that most dealers felt it was not fair.

ROHRER CHEVROLET:

(1) Frank Maiorana: On 8/8/67, Nabcor purchased a 1967 Chevrolet from Rohrer Chevrolet for resale to a Nabcor customer (N-278, 3599). The car was out of Rohrer's own stock, purchased 6/1/67 (3600), 2 months before Nabcor's broker obtained the customer (3597). The following month, on 9/6/67, William McIntyre, Rohrer's Fleet Manager, wrote to Nabcor's Snyder confirming Rohrer's agreement to sell Chevrolets to Nabcor at the fleet price of $50 over invoice less 1% (20047). From 11/2/67 to 12/27/67, Rohrer sold 13 additional Chevrolets to Nabcor (N-298, 300, 302, 308, 309, 313, 317, 318, 322, 323, 333, 339 and 340). Transaction N-308 was for Joseph Czochara, customer of Richard L. Owens, d/b/a American Auto Brokers, a Nabcor franchisee, in Lockport, N.Y. Czochara lived in North Tonawanda, N.Y. The car was sold to Nabcor on 11/20/67 and sold by Nabcor to Czochara on or about 11/20/67 (N-308). Transaction N-309 was for William Pemberton, customer of Nabcor franchisees Eugene Novy and Peter Mollemet, Auto Livery, Inc., in Cheektawaga, N.Y. Pemberton lived in Hamburg, N.Y. The car was sold to Nabcor on 11/16/67 and delivered by Nabcor to Pemberton on or about 11/20/67, but delivery was refused and the car was returned to Rohrer. Both Chevrolets were driven from Camden, N.J. to Buffalo by Nabcor employees, to show that the boycott by the Buffalo dealers would not stop Nabcor from delivering cars to its franchisees in Buffalo. These (together with the car

for Teresa Strimple Arent — see ¶ 7 under BOB BAIN CHEVROLET) were the first deliveries of cars to the Buffalo area (other than Fords to Westover Ford and M & R Motors, Inc., both in Ghent NY). The BADA Bulletin about Nabcor, General, Novy, Mollemet, Auto Livery and other Nabcor franchisees was dated 9/29/67 (GM Doc. 682-3).

(2) Joseph Czochara: Employed by GM with Nabcor franchisee Owens at the time of his car purchase. Czochara took his car several times to Paul Wilson Chevrolet, Inc. for warranty work during 1/68, which was refused by the dealer. Czochara paid for the work himself. The car had 900 miles on it at the time. The dealer said that Czochara would not have to pay for warranty work if he obtained a change of the name on the warranty from Nabcor to Czochara.

(3) Richard L. Owens: Will confirm the car order and purchase by Czochara, who was then working with Owens at the Chevrolet Plant on River Road, North Tonawanda, N.Y. Also, Owens ran advertising in the Lockport Retailer on 11/23/67 (GM Doc. 684), shortly prior to the warranty work refusal.

(4) See in Part V a description of the GM documents evidencing communications about Nabcor and its franchisees in the Buffalo area between Womack of the Buffalo Chevrolet Zone and the Philadelphia Regional Office of the GM Fleet Section during the period from 12/14/67 through 1/5/68, particularly on 12/21/67 through 12/26/67 and 1/5/68. Womack transmitted a copy of the BADA Bulletin dated 9/29/67 and a copy of the Owens Retailer ad to the Fleet Section personnel in Philadelphia. Also, see GM document dated 12/12/67, showing that the Fleet Department of the Philadelphia

Chevrolet Zone was going to alert the Chevrolet dealers about Nabcor. Also, see document from Nabcor to Rohrer, dated 12/12/67, authorizing Rohrer to accept fleet rebates from GM on any cars purchased by Nabcor. By such date, Rohrer had sold 11 cars within the preceding 60-day period for which a fleet rebate application could be made (GM doc. 343).

(5) Frank Maiorana (cont'd): Order 10640 for a Caprice station wagon ordered 10/19/67 was being held up by GM prior to FM's meeting with Belcher, Staff Assistant to the Chairman of GM on 12/15/67 (20037, p. 3 of 2/19/68 letter to Whitbaum of the Justice Department).

(6) Jack Snyder: In 12/67, Rohrer Chevrolet notified Snyder that a Chevrolet station wagon had come in for Alf-Lex Auto Sales, a Nabcor franchisee in Elmsford, N.Y. and would be ready in a couple of days. On the day of delivery, McIntyre, Fleet Manager at Rohrer, called Snyder to tell him that the Chevrolet could not be delivered pending Zone Manager approval. Snyder told McIntyre that he needed the car quickly and offered more money. McIntyre told Snyder that he was sorry, but he was told by Rohrer's General Manager to hold up the car and money had no bearing on it. He said that he had to wait for word of approval from the Chevrolet Zone Manager. After 12/15/67, the date of FM's meeting with Belcher, the station wagon was released to Nabcor and Nabcor resold the wagon to the customer of Alf-Lex. At the same time there were three other cars on order. McIntyre said they had been ordered from GM but he could get no information from the Zone. See ¶ 3 of Snyder foundation testimony above.

(7) Frank Maiorana (cont'd): After the Rohrer delivery(ies) to Nabcor on 1/2/68 (N-339, N-340) or 1/12/68 (Broker Herman A. Jones, doc. 0061-2), all 8 pending Nabcor orders were held up by Rohrer (Nabcor consecutiv

order numbers: 438 - 10/25/67; 457 - 11/28/67; 458 - 11/24/67; 462 - 11/24/67; 465 - 11/29/67; 480 - 12/28/67; 483 - 12/28/67; 489 - 1/8/68). The 7 car orders underscored above had been received from GM by Rohrer, but remained undelivered for up to 6 weeks. Neither these nor any other cars were delivered by Rohrer to Nabcor during the period 1/2/68 or 1/12/68 through 2/19/68. Nabcor purchase order No. 10687 dated 2/6/68 for customer Paolucci was marked "cancelled" and returned by Rohrer on 2/9/68 (3049) and on 2/13/68, Nabcor wrote a letter to the Nabcor broker saying Nabcor was sorry it could not fulfill the order (3051) and a $300 refund check was sent out by Nabcor on 2/13/68 (3052). During 2/20/68 - 3/5/68, Rohrer delivered 5 cars to Nabcor, all ordered during 11/67 or 12/67 (Nabcor consecutive order ## 483, N-373; # 465, N-368; # 457, N-380; # 480, N-383 and # 462, N-386). Rohrer required that Nabcor pay $50 over tissue (up from $25 over tissue).

(8) Anthony Maiorana: See ¶ 5 of foundation testimony above relating to AM's meeting with GM's Speece and DiSimone on 12/13/67.

(9) Donald Bolling and Dale Strimple: Dealers in Buffalo area were telling prospective customers that Nabcor would not be able to get any cars.

(10) Frank Maiorana (cont'd): See ¶¶ 10-20 of foundation testimony above about FM's meetings and other communications with GM's Belcher, Karney, etc. FM went to visit with Belcher because GM had told Rohrer to stop all deliveries of cars sold to Nabcor, among other problems. FM told Belcher about Rohrer being told by GM to stop all deliveries to Nabcor.

(11) Frank Maiorana (cont'd): During 2/68, Rohrer delivered 3 of the 4 cars being held up by GM plus 2 additional cars ordered by Nabcor

from Rohrer (N-383 and N-373). The 3 cars previously stopped which were delivered were N-380, N-386 and N-378.

(12) Jack Snyder (cont'd): McIntyre delivered the 3 cars plus the 2 additional cars to Nabcor during 2/68. McIntyre told Snyder that GM told them that all cars sold to Nabcor would come out of Rohrer's retail allotment, that Rohrer would not be able to get any additional cars to sell to Nabcor out of the fleet allotment (Tr. 24). Nabcor continued to buy cars from Rohrer.

(13) Frank Maiorana (cont'd): From 3/21/68 to 7/15/68, Nabcor purchased 14 or 15 (Query re N-434, Rohrer or Matt Slap), N-389, N-391, N-394, N-401, N-402, N-408, N-414, N-417, N-426, N-429, N-431, N-433, N-441 and N-446. On 8/1/68 and 8/16/68, Nabcor placed orders 10758 (N-465) and 10759 (N-463) with Rohrer. On 8/20/68, McIntyre, Fleet Manager of Rohrer, wrote a letter to Snyder (20049) advising that "your order # 10758 was submitted to Chevrolet ... for expediting. It was returned to us because you are not recognized as a fleet account. Therefore, your orders will have to be taken from our allotment which is impossible at this time because we are not sure of our standing. We are truly sorry this situation has arisen and are holding your order # 10759, as we will do our best and keep after Chevrolet..." (20049). Nabcor order # 10758 was resubmitted to Rohrer, and the car was delivered by Rohrer on 11/13/68 (N-465) and Nabcor order # 10759 was delivered by Rohrer on 10/31/68 (N-463).

(14) Frank Maiorana (cont'd): From 10/31/68 to 7/30/70. Rohrer sold approximately 57 Chevrolets to Nabcor. Nabcor was not able to get all the Chevrolets it wanted from Rohrer because the cars were coming out of Rohrer's retail allotment.

(15) Jack Snyder (cont'd): On 5/10/70, Snyder called McIntyre, who told Snyder that Rohrer would not sell any more cars to Nabcor (Tr. 20, 34-6). Snyder then spoke with the General Manager, Bill Lovell (Tr. 131), who told Snyder that they have no control over the shut off (Tr. 35-6). McIntyre also called Snyder and said that Rohrer got the word from Zone not to sell any more cars to Nabcor, period. McIntyre did not say that the factory was denying a fleet allotment to Rohrer (Tr. 37-8). Also, Snyder spoke to Hilda Madden of Rohrer Chevrolet about the cut-off of Nabcor This meeting was in person (Tr. 37). Snyder spoke with McIntyre in person (Tr. 37) and by telephone (Tr. 37) about the cut-off. McIntyre and Madden told Snyder that they believed it was GM's Echinrode, head of the roadmen, who directed Rohrer to stop selling to Nabcor.

(16) Frank Maiorana (cont'd): See ¶ 44 of foundation testimony above, regarding GM's Echinrude having told Rohrer to stop selling to Nabcor and Craig Flannard having told FM about what Lou Collins of Rohrer Chevrolet had told him about GM stopping Nabcor. In 10/70, Craig Flannard applied for a position with Nabcor and told FM that the Chevrolet Zone Manager or roadman told Lou Collins of Rohrer Chevrolet not to sell cars to Nabcor. Lou Collins had told Flannard that the problem arose because dealers had complained to GM because of the burden of repairing the cars sold by Nabcor. Based on this information, FM called Bill Lovell, General Manager of Rohrer Chevrolet, on 9/29/70, who told FM that Chevrolet officials had told him to stop selling cars to Nabcor, that other dealers have complained to Chevrolet to stop Nabcor. This information was given to both McIntyre and Madden. Also, FM spoke with Hilda Madden, who said she thought it was Echinrode, head of the GM roadmen (20046). Also, FM spoke with Sales Manager Lou Collins, who told FM that he thinks it was a Nabcor-sold car in for repair at Degnan Chevrolet which caused the problem, after FM told Collins that Craig

Flannard had told FM that Collins reported that a GM official came in to the Rohrer premises and told him and Lovell not to sell any more cars to Nabcor. (20045-6). FM's meeting with Flannard was at 8 P.M. on 9/29/70 and earlier in the day. FM also told Collins that Flannard had said that it was Collins' statement that the problem with Nabcor arose because small dealers had complained to the dealer associations, which notified GM, and that others had asked Chevrolet Division to stop Nabcor.

(17) Frank Maiorana (cont'd): On or about 9/29/70, FM called the Justice Department in New York City and advised the Department of the statement made to FM by Flannard. FM told then he had asked Flannard to return to Nabcor's office the next day, and the Justice Department sent two lawyers to Jenkintown the following day, where they talked with Flannard in Nabcor's office about the above Rohrer incidents. Also, FM told the Justice Department that Flannard had reported that he had seen a bulletin or letter of the New Jersey Automobile Dealer's Association under the signature of Kirk Mitchell, of Randolph Chevrolet, advising dealers not to deal with Nabcor posted on the bulletin board of Cole Pontiac, in Pennsauken, New Jersey. Flannard said that previously he was a salesman for Dave Cole Pontiac. This occurred during the Spring of 1969, according to Flannard. FM reported all this to the Justice Department prior to their visit, which prompted the visit, on or about 9/30/70.

(18) Jack Snyder (cont'd): Hilda Maiden told Snyder on or shortly after 9/30/70 that the General Manager (Lovell), Sales Manager (Collins) and Fleet Sales Manager (McIntyre) and Rohrer Controller were locked in a room with factory officials at the time or immediately after the FBI came into Rohrer's place of business with a search warrant and looked over

At the same time, the New York Times was calling Citibank, Luby Chevrolet and Scarsdale Dodge about Nabcor (NYT Doc. 38-9). The documents show that Luby recommended Nabcor 100%. Several days later Luby stopped dealing with Nabcor and refused to deliver numerous cars on order. Also, FM gave Ruckle as a reference to the National Better Business Bureau on or about 3/9/67 (6379-81). (NBBB docs. 162-66). Nabcor's membership application was rejected by the NBBB. Nabcor gave Citibank as a reference once again.

Documents: Pltfs: 6022-4, 6092-3, 6107-10, 6122, 6144, 6149, 6161-69, 6171, 6173-6, 6198-6202, 6204-6, 6205-12, 6372, 6379-81, 20016, 20070-1, deal folders and deal forms; Weinbaum letter of 2/19/68; calling cards.

NYT: 38-9, 64-7, 78-80.

National BBB: 162-166.

Ruckle: Deal folders.

SHORE CHEVROLET:

(1) Badie G. Bodiya: See ¶ 1 of foundation testimony above.

(2) Frank Maiorana: See ¶¶ 33-34 ~~35-41~~ of foundation testimony above.

(3) Mark A. Stoharski: See foundation testimony above.

(4) See CEROTA CHEVROLET-OLDSMOBILE for additional testimony and documents.

MATT SLAP CHEVROLET:

(1) Frank Maiorana: On 12/9/66, Allan Goldstein, Sales Manager of Matt Slap Chevrolet wrote to Nabcor confirming Slap's agreement to sell Chevrolets to Nabcor at $50 over invoice (20081). From 1/27/67 to 10/30/67, Nabcor bought 17 cars from Matt Slap Chevrolet.

(2) Frank Maiorana (cont'd): During 4/67, Matt Slap applied twice for a fleet certificate for Nabcor, but was turned down each time, according to General Manager Robert Sloane. By letter dated 4/10/67, Nabcor gave Slap a list of serial numbers for 20 cars purchased by Nabcor during 1966 (6129). During 12/67, the Chevrolet Zone advised Matt Slap not to deal with Nabcor, according to Sloane, because Nabcor was not a qualified fleet purchaser.

(3) Anthony Maiorana: On 1/24/68, Henry Thomas of the Philadelphia Branch of GMAC spoke with AM about Nabcor being required to go through a GM dealer to obtain a line of credit for the purchase of a line of cars. See ¶ 6 of AM's foundation testimony. AM went to Matt Slap Chevrolet and spoke with Robert Sloane, General Manager, who said he was interested and requested financials from Nabcor and FM, and said that FM would be required to guaranty the lease payments personally, which AM said was agreeable. The line of credit was to be for $25,000 and FM's net worth was approximately $200,000 as shown on papers submitted to Matt Slap and then to GM-GMAC. The Nabcor request was sent in by Matt Slap to GMAC, and AM was advised by Sloane that GMAC turned down the request, between the end of 1/68 and the middle of 3/68. Robert Sloane said that he liked Nabcor's proposal so much, that he sent the deal over to Matt Slap's bank, Central Penn National Bank, to try to get the financing for Nabcor, but the deal was turned down.

(4) William Nash: During early 1967, Goldstein told Nash with AM in person that he wanted Nabcor to obtain a fleet certificate, so that he could get the $50 rebate. Goldstein said don't worry. No problem about getting a fleet certificate for Nabcor even though Nabcor is selling cars. Matt Slap will get it for Nabcor. Nash then compiled a list of 20 cars and sent it to Goldstein. Subsequently, the fleet certificate application by Slap

was turned down by GM. Goldstein said to Nash that he knew Nabcor was selling cars. Also, GM told him not to sell any more cars to Nabcor because Nabcor does not have a factory franchise. After the fleet certificate turndown, Goldstein said he wanted to sell directly to the Nabcor customers, except that such sales would not qualify for the fleet rebate from GM.

(5) Frank Maiorana (cont'd): In another attempt to obtain a fleet certificate, as a result of FM's communications with Belcher, FM made an arrangement to purchase 25 daily rental cars from Matt Slap Chevrolet during 2/68. FM submitted a personal financial statement (GM Doc. 770-2 sides) dated 2/14/68. A discussion of the contents of GM Docs. 763-784 and 824 is set forth in Part V of this brief. By purchasing 25 cars during 1 year, Nabcor hoped to be able to qualify for a fleet certificate. This was being done to give GM the justification, if it needed to give any to its dealers, to issue a fleet certificate to Nabcor. The purchase by Nabcor was conditioned upon obtaining financing from GMAC. The financing was refused. Matt Slap even attempted to obtain financing from a local bank, the Central Penn National Bank, but was unable to do this for Nabcor. Accordingly, Nabcor was unable to purchase the amount of cars needed to obtain a fleet certificate from GM. Also, it appeared that Nabcor did not qualify in any event because in order to qualify for the fleet financing plans of GMAC-GM, the fleet purchaser had to meet the requirements for a GM fleet certificate prior to the purchase, according to Matt Slap.

(6) Jack Snyder: On 3/28/68, Allan Goldstein told Snyder that the financing request made to GM-GMAC had been shot down by GMAC because they know what Nabcor is doing, selling cars, and GMAC feels that Nabcor will be selling the cars Nabcor says it intends to purchase for rental (Tr. 52, 167, 187).

(7) Anthony Maiorana (cont'd): AM spoke with Controller Robert Sloane who said that Nabcor was turned down for a fleet certificate each of the two times Nabcor applied, during early 1967. Also, Sloane advised AM that Nabcor was turned down by GMAC for a line of credit being sought by Nabcor to buy rental cars.

(8) Frank Maiorana (cont'd): On 6/28/68, Matt Slap sold a Chevrolet to Nabcor (N-434). On 9/17/68, Nabcor ordered a Corvette for custom Askew, from Matt Slap (Nabcor P.O. # 10777 (J-68). See ¶¶ 35-41 of the foundation testimony of Frank Maiorana and ¶ 2 of the foundation testimony of Anthony Maiorana.

(9) Jack Snyder (cont'd): The fleet manager of Matt Slap kept assuring Snyder for months that the car would come in. Then, on 5/9/69, after 8 months of waiting, Snyder called Goldstein and asked for a specific delivery date. Goldstein answered "I do not know when it is coming in or if it is ever coming in". Goldstein offered no further information and said nothing could be done about it (6314). On or after 5/14/69, Snyder had a telephone conversation with Robert Wright of the Washington Star in Washington, DC, editor of the "Action Line", about the delay in delivery (J-66) and Wright sent a memorandum of complaint to Snyder (J-66, 67, 69). Also, see deal folder 6982.

(10) Frank Maiorana (cont'd): After the Corvette incident, Goldstein told FM that Matt Slap could supply Nabcor with no more cars because of problems with GM and dealer complaints about Nabcor.

(11) Anthony Maiorana: On 10/7/70, AM called Matt Slap's new General Manager, James Cataldi, who said he knew all about Nabcor buying

for resale. He said he wanted $65 over tissue, but wanted to ask GM Zone man Schmidtdale if he could sell to Nabcor if if Nabcor was a legitimate fleet buyer. Cataldi told FM that Schmidtdale said Nabcor is not a legitimate fleet buyer. Matt Slap sold 2 cars to Nabcor in 1972, after this suit was commenced.

(12) Michael F. O'Brien: AM said he had spoken with Bud Landi, Fleet Manager of Matt Slap during early 1973, who had told AM to send orders to Bud Landi, marked to his attention. O'Brien sent the orders, as follows: One on 2/13/73; two on 2/14/73 and one on 2/15/73. On 3/15/73, O'Brien called Landi to ask where the cars were, and Landi said he never received any orders. He said that AM had said to expect orders, but said he never received any.

(13) Anthony Maiorana: Confirms above telephone conversation with Landi.

(14) Frank Maiorana (cont'd): On 3/4/73, FM executed an affidavit in this action which stated in part: "Matt Slap is presently dealing with Nabcor." (p. 26), only 11 days before Slap's denial that it received the 4 orders from Nabcor mailed over three different days.

Documents: Pltfs: 5913, 6098, 6128-9, 6312, 6314, 20067, 20081-2, deal folders (including 6982), Thomas Note.

GM: 763-84, 824, Chev. Rental Car Fleet Plan for 1967.

JACK STEVENS BUICK:

(1) Dale Strimple: On or about 10/28/68, Strimple went to Stevens and tried to buy cars. Jack Stevens said "There is a rash of brokers going around" and refused to sell to Strimple. This "rash" language is the

10860, which was placed with Kline Pontiac, and delivered by Kline on 1/9/70 (N-610, 5331).

(6) Jack Snyder (cont'd): After receiving Wilson's 8/18/69 letter, Snyder called other dealers in the Philadelphia area and was given the same price, $150 over tissue (Tr. 64-5). Outside the Philadelphia area, the price remained substantially lower (Tr. 66).

Documents: Pltfs: 0017-20. 6158-9, 20000-1, 20004, 20010-13, 20063, 20066, deal folders and deal forms.

PAUL WILSON CHEVROLET, INC..

(1) Joseph Czochara: See ¶ 2 under ROHRER CHEVROLET.

(2) Frank Maiorana: See ¶ 1 under ROHRER CHEVROLET.

Documents: Pltfs: N-308.

WOLFINGTON CHEVROLET:

(1) Frank Maiorana: On 3/16/66, FM spoke with Eustace Wolfington, owner of Wolfington Chevrolet. Wolfington agreed to sell Chevrolet to Nabcor at $35 over invoice. FM told him Nabcor was selling cars. FM sent a letter to Wolfington on the same day confirming the agreement (20069). From 3/16/66 to 7/25/66, Nabcor bought 2 cars from Wolfington (N-881 and another). Title to N-881 was required by Wolfington to be put directly into the Nabcor customer's name, Joseph Skokan, with payment by the customer (2355 et seq., 6013). In late 1966 or early 1967, Wolfington cut Nabcor off. Wolfington told FM that GM told him to cut Nabcor off. Also, Ralph Elias, a Wolfington salesman, told FM at the time that GM shut Nabcor off. Nabcor never bought cars from Wolfington again.

(2) William Nash: Nash worked for Wolfington as a salesman for 2 months prior to joining Nabcor. Nash made the contact with Wolfington for sale of cars to Nabcor. After the refusal, Ralph Elias, a friend of Nash and Wolfington salesman, told Nash during a telephone conversation that the Zone had said don't sell to Nabcor. It's not Eustace, said Elias. Eustace would not talk to Nash about the refusal. Dooley, a Wolfington salesman, in a meeting with Nash, said that GM cut Nabcor off, telling Wolfington not to sell any more cars to Nabcor. Nabcor bought at least 2 cars from Wolfington during 1966.

Documents: Pltfs: 6013, 20069, deal folders (including N-881, 2355 et seq.) and deal forms.

YONKERS CHEVROLET:

(1) Ernest M. Turco: During 1968, Yonkers Chevrolet would not service customers of Nabcor East. This occurred 3 or 4 times. Yonkers was located a block or so away from Nabcor East. Turco talked with the Service Manager of Yonkers Chevrolet, who said that the owner would not allow servicing of cars sold by Nabcor. He said that this came down from the factory. He said it was up to GM to permit servicing.

Documents: None.

VARIOUS GM DEALERS:

(1) Bolling, Cohen, Heim, Jamele, AM, FM, Moore, Nash, O'Brien, Ow Park, Rose, Runk, Snyder, Strimple, Turco, Vanderzee, Wills, Young will testify about the numerous attempts they made to obtain sources of supply and the related refusals, apparently unilateral, except for the "structural" matters covered in Part V. Also, some will testify to the numerous requests by them for a fleet certificate or fleet number.

V. EVIDENCE RELATING TO THE ILLEGAL TERRITORIAL EXCLUSIVE GRANTED BY GM (GMAC, DONNER AND ROCHE) TO EACH OF GM'S FRANCHISEES

GM'S FLEET SALES PROGRAM IS AN ILLEGAL RESTRAINT PER SE

A. Introduction.

The overt conspiratorial activities against Nabcor and its franchisees by officials of GM, GMAC, GM franchisees and by others, as outlined above in Parts III and IV were the inevitable result of the failure of GM's de facto program to create and preserve "territorial exclusives" as to "retail" sales by GM dealers, which territorial exclusives, as a means of fixing prices for retail sales at excessively high levels, have been held to be per se violations of law. An integral part of GM's program of territorial exclusives is GM's fleet sales system, all of which alone is illegal as a per se restraint. This fleet sales system of GM includes:

(1) GM's fleet certificate program, including the benefits given for holders thereof as described in the certificate itself and GM's "Procedure for Handling Requests for General Motors Fleet User Certificate", revised 11/72 (GM Doc. 3);

(2) GM's fleet allotment (reserve) program;

(3) GM's fleet rebate program (discontinued in 1970) and other fleet plans, such as guaranteed resale values and loans through GMAC;

(4) Drop shipments to places outside of the selling dealer's territory when sales are made to qualified fleet purchasers; and

(5) Special programs for providing warranty work or reimbursement therefor as to qualified fleet purchasers.

Plaintiffs will prove that the fleet certificates issued by GM to "qualified" companies and to customers of "qualified" leasing companies serve no legal, legitimate purpose for GM, GM dealers or ultimate owners or users of the cars. The only purpose is illegal, to identify to GM dealers which companies they are permitted to sell to on a wholesale basis (small markup and, when desired, a fleet allotment from GM); and by repeated denial of Nabcor's requests to obtain a fleet certificate, GM was, in effect, telling its dealers not to sell cars to Nabcor for retail resale or for lease.

Although GM's officials have testified that the fleet certificate has no benefits to the holders thereof, the program for the issuance of fleet certificates to qualified companies is determined and administered at the corporate level of GM, in the "Fleet Section" of the Marketing Staff, and the policies are reviewed by GM's Vice President of Marketing and GM's Supervisor of Sales. Determination of who is to obtain fleet certificates is not left to the 5 automobile Divisions of GM (each of which alone is a multi-billion dollar business), unlike GM's programs for fleet allotments and fleet rebates, which are left to each Division. This is significant, showing an overall corporate policy with respect to the blacklist or whitelist mechanism used by GM, GMAC, Donner and Roche to prevent Nabcor from buying cars from willing GM dealers for retail resale and lease.

GM will testify that each of the 5 car Divisions has the authority to give fleet benefits in the form of additional cars to its selling dealers through the "fleet allotment" or "fleet reserve" (used interchangeably) with respect to any fleet customer of a GM dealer, whether or not the customer has a GM fleet certificate. Companies which have, or qualify for, a GM fleet certificate are able to buy GM cars through the fleet allotments of the various GM Divisions. Companies which fail to qualify for a fleet certificate solely because of an insufficient number of cars (fewer than 20) registered in their name (as evidenced by the R. L. Polk Registrations) are also allowed to buy cars through the fleet allotment, if they have bought at least 10 cars.

But non-franchised companies such as Nabcor and its franchisees which do not qualify solely because of the use to which they will put the cars (i.e., resale of the cars) are not given the benefit of the fleet allotment no matter how many cars they have bought or intend to buy, even though GM will testify that each of the Divisions is supposed to be permitted to use the fleet allotments at their own discretion. The Divisions have not exercised their discretion in favor of Nabcor. Some GM officials have testified that fleet allotments are only for qualified fleet purchasers. GM has tried unsuccessfully to hide the *de facto* corporate policy of not letting Nabcor buy cars on a "fleet" or "wholesale" basis from willing GM dealers. GM will not issue a fleet certificate to Nabcor and GM will not tell its dealers that they are free to sell to Nabcor on a fleet or wholesale basis even though Nabcor has no fleet certificate. Nor will GM permit the willing dealer to obtain the supply of cars he needs, from the GM fleet allotment, to make the desired wholesale sale to Nabcor.

GM prevents non-franchised resellers such as Nabcor from buying on a fleet basis (through GM fleet allocations) from franchised GM dealers by saying that each of the GM automobile Divisions has the authority to allocate cars for resale to Nabcor. Yet, this authority is illusory, because the "authority" is not exercised in favor of Nabcor. The real authority is to let the Divisions stop any wholesale sales to Nabcor, and at times the policy has been extended to stopping all sales of any kind to Nabcor.

GM's policy is quite consistent: Nabcor does not qualify for fleet rebates or other fleet plans (guaranteed resale values; warranty programs; drop shipments); Nabcor does not qualify for fleet allocations; and Nabcor does not qualify for a fleet certificate (which many GM dealers believe at the outset, or are subsequently told by GM officials, is necessary to enable the dealer to obtain a fleet allotment to supplement the dealer's limited retail allotment of cars for the month, or to make any sales at all to Nabcor on a wholesale basis from a price standpoint). GM's list of qualified fleet companies is a "whitelist" of approved wholesale purchasers and Nabcor's exclusion from the list is a blacklisting of Nabcor. The fleet certificate normally is evidence of a company's presence on the whitelist of approved wholesale purchasers. See "General Motors National Fleet Account Name List, with 10 or more cars, "qualified" accounts - 3/22/68 L. N. Mays letter (Frink Ex. 2).

The consequence of GM's denial of the fleet allotment to GM dealers who wish to sell to Nabcor at wholesale or fleet prices out of the fleet allotment is to prevent the dealer from making the sale to Nabcor. Without the allocation, the dealer often has little or no economic incentive to sell his limited retail allotment at the exceedingly low fleet or wholesale prices, particularly when GM has a production backlog. Actually, as will be seen later, sales at these low prices are of benefit to GM almost exclusively, inasmuch as GM obtains the same price for the car whether the dealer sells it at retail or at wholesale. In other words, GM uses its fleet program to bypass the GM dealers, in effect, and make the sale itself, for slightly above GM's own wholesale price.

GM is "blacklisting" Nabcor and its franchisees or is excluding them from the "whitelist" of companies which are qualified by GM to receive a fleet certificate because they use the cars in a way approved by GM (rental, lease or for own use, such as New York Telephone Co.). GM's development and use of the blacklist and whitelist procedures is an illegal restraint per se, and results in illegal concerted refusals to deal, boycotts, territorial restraints, price-fixing and other per se restraints. The object of the conspiracy and combination is to prevent Nabcor from buying from GM dealers at fleet or wholesale prices for resale in competition with GM's franchisees who have a higher overhead (imposed on them by GM). The GM dealers willing to sell to Nabcor are forced to go along with the conspiracy and combination because GM is their only source of supply for the GM cars, and GM has a substantial economic control over the GM franchisees which GM is not afraid to exercise, by terminating the GM dealer's franchise or otherwise penalizing him through reduced retail allotments or factory audits of the dealer's warranty claims, among other practices.

When the Fleet Section notified the Chevrolet Division in early 1968 that the Buffalo Chevrolet Zone was using the fleet allotment to prevent Nabcor from making purchases from willing dealers and the Zone was engaged in other illegal activities directed against Nabcor and its franchisees, the Fleet Section received no word from Chevrolet about the matter, and did not as Chevrolet Div. did nothing either , except permit the Chevrolet personnel in Buffalo, New York and Philadelphia (among other places) to continue shutting off Nabcor's sources of supply of Chevrolets. All this occurred in spite of the recent injunction in the California Discount Case which enjoined GM perpetually and nationwide from interfering with referral plans, discount houses and other non-franchised persons engaged in reselling new Chevrolets. The judgment was entered 8/18/66.

GM's policy seems quite clear. GM dealers are not permitted to sell cars at fleet or wholesale prices to Nabcor, whether or not the cars come out of any fleet allotment, thereby preventing Nabcor from competing with GM's franchisees in selling and leasing new cars to the retail market.

The following is an explanation of GM's fleet sales system together with the testimony (mostly by GM officials) on which the explanation is based.

B. Organization of GM Fleet Activities.

1. GM has had so-called "fleet" activities since the middle 1920's (Rock Tr. 24). The Divisional "fleet departments" (in the Chevrolet, Pontiac, Oldsmobile, Buick and Cadillac Divisions) with a corporate staff department (in Detroit) were established after World War II (Rock 25). This corporate staff department is now known as the Fleet and Government Sales Section (the "Fleet Section") of the GM Marketing Staff (Rock 25-6).

2. The Fleet Section, as a staff function of GM, determines GM corporate policy relating to fleet sales and transmits it to the Divisions for implementation (Rock 25). The Fleet Section services each of the five GM automobile Divisions: Chevrolet Motor Division, Pontiac Motor Division, Oldsmobile Motor Division, Buick Motor Division and Cadillac Motor Division (Rock 25).

3. All portions of the fleet sales policies of the Fleet Section are reviewed by higher officials of GM who, during Rock's tenure as Director of the Fleet Section, were:

(a) James Conlin, Supervisor of Sales Section of GM, Rock's immediate supervisor (Rock 26); and

(b) Mack Worden, Vice President of Marketing, an officer of GM, to whom James Conlin reported (Rock 26).

4. The Fleet Section has its "Central Office" in the Detroit headquarters of GM and has 8 field offices located in New York, Philadelphia, Chicago, Los Angeles, Dallas, Atlanta, Detroit, and Washington, D.C. (for

U.S. Government sales only). (Olson 6, Rock 13-14.)

5. The Philadelphia Regional Office of the Fleet Section is responsible for Philadelphia and Buffalo, the areas which, together with New York, were responsible for most of Nabcor's problems in obtaining cars after GM dealers agreed to sell to Nabcor on a fleet or wholesale basis (GM Doc. 5).

6. The Central Office of the Fleet Section in Detroit has at least 10 employees, including:

(a) Director (Berg 2), who had the authority for granting the final approval for issuance of fleet certificates (Olson 96).

(b) Manager of Rental, Leasing and Commercial Sales (Berg 2, Rock 14), who has direct supervision of the 7 Regional Directors (Berg 5). His function is to perform internal studies, keep statistical data and review GM's competitive position in the fleet business, including an analysis of the market for the leasing of automobiles (Berg 5). He is responsible to the Director ("a" above) (Karney 3.) He does not have authority to issue a fleet certificate (Karney 8).

(c) Government Sales Director, responsible to the Director ("a" abo (Karney 3).

(d) Manager of Sales Finance or Manager of the Fleet Retail Financing Plan, who is responsible to the Director ("a" above) (Karney 70, Rock 15).

(e) Truck Sales Director, responsible to the Director ("a" above) (Rock 15).

(f) Manager of Rental Sales (Rock 17);

(g) Person in charge of state and local sales (Rock 36);

(h) Manager of National Accounts, Leasing, who is responsible to the Manager of Rental, Leasing and Commercial ("b" above) (Karney 4). His function is to determine market conditions from the major commercial rental and leasing accounts and report to his superior these conditions (Karney 4). He has the authority to issue fleet certificates, review the certificate requests and supporting documents. Others had this authority too (Karney 8).

(i) Administrative Assistant to the Director (Olson 87). He usually handled the administrative procedures for fleet certificate applications (Olson 96).

(j) a secretary.

6. Each of the 7 Field Offices of the Fleet Section is headed up by a Regional Director (Karney 21). The Regional Director has no sales responsibility to any person (Karney 21). New York City is in the North-East Region and Philadelphia, Buffalo and New Jersey are in the East-Central Region (GM Doc. 5, Karney 16, Olson 33).

7. From 1966 to 1973, the following persons involved with Nabcor-related matters held positions in the Fleet Section in Detroit and/or one or more Field Offices of the Fleet Section:

(a) J. J. Owens, Director of the Fleet Section at least during 2/66 and 3/66 and predecessor to Mr. Olson (Karney 24);

(b) Albert T. Olson, Jr., Director of the Fleet Section from 8/66 or 9/66 until mid-spring of 1968, succeeded by Mr. Berg (Olson 3) and preceded by Mr. Owens (Olson 3). Olson first became aware of Nabcor in 12/67 (Olson 4);

(c) Robert L. Berg, Director of the Fleet Section from 8/68 through 7/69 (Berg 2); Manager of Rental, Leasing and Commercial Sales from 1965 through 7/68 (Olson 2), succeeded by Rock (Olson 3). Also, see position in ¶ 9 below.

(d) John D. Rock, Manager of Rental, Leasing and Commercial Sales from 8/1/68 to 6/30/69; and Director of the Fleet Section from 7/1/69 through

12/31/73 (Rock 3); also see positions in ¶ 9 below;

(e) Nelson M. Karney, Manager of Rental, Leasing and Commercial Sales from 6/1/74 to 10/10/74 (Karney 3); Manager of National Accounts, Leas from 8/68 to 5/74 (Karney 3); Regional Director of the New York Regional Office of the Fleet Section from 9/ 65 through 8/68 1968 (Karney 4); Regiona Director of the Dallas Regional Office of the Fleet Section prior to 9/65 (Karney 4); he never participated in the establishment of fleet allotments (Karney 9) although inquiries were made to him from fleet users relating to allocations under the fleet allotment. He forwarded these inquiries to the Divisions (Karney 102);

(f) James Small, Director of the Philadelphia Regional Office of the Fleet Section during 8/1/68 at least through 7/69 (Rock 16);

(g) Bud Moore, Director of the Chicago Regional Office of the Fleet Section prior to 8/1/68 then replaced Robert DiSimone as Regional Directo of the Philadelphia Regional Office of the Fleet Section from 8/1/68 to 7/1/69; then Manager for Rental Sales after 7/1/69 (Rock 16-17);

(h) Robert M. DiSimone, Regional Director of the Philadelphia Regional Office of the Fleet Section (Perry 23, Karney 46), then Director of the New York Regional Office of the Fleet Section after 8/68, succeeding Karney (Rock 15);

(i) Frank Vader, Manager, Sales Finance during 1973 at least (Karney 70):

(j) G. R. Frink, Administrative Assistant to the Director of the Fleet Section on 1/11/68; subordinate to Olson's position (Olson 87);

(k) Lou Proctor, replaced Bud Moore as Director of the Chicago Regional Office of the Fleet Section on or about 8/1/68 (Rock 16-17);

(l) C. B. Pinkstaff, Director of the Detroit Regional Office of the Fleet Section during the whole period (Rock 17);

(m) Miriam Yost, Karney's secretary in the New York Regional

Office of the Fleet Section (Karney 19); and

(n) Marguerite, secretary to Owens, Fleet Section.

8. Each of the 5 GM Divisions has its own fleet department, with the main office located in the Division's own city (Rock 14) and other personnel located throughout the country. The Fleet Departments of the Divisions are responsible for the "operational" aspects of fleet activities as distinguished from the "staff" functions (Rock 14).

9. From 1965 to 1973, the following persons involved with Nabor-related matters (including some of the officials of the Fleet Section identified in ¶ 7 above) held positions in the Fleet Departments of one or more of the 5 Motor Divisions of GM:

(a) Robert L. Berg (see ¶ 7 above), Director of Fleet Sales for Chevrolet Motor Division from 7/69 to 10/8/74 (Berg 2);

(b) Albert E. Collier, National Distribution Manager for Cadillac Motor Division from 1/64 to 3/73 (hearing 3/19/73 Collier 152-3);

(c) Hubert B. DuPuis, Zone Product Distributor, Philadelphia Zone, Cadillac Motor Division from 1963-74 (hearing 3/19/73 DuPuis 130-1);

(d) William H. Gordon, Jr., Manager, Philadelphia Zone, Cadillac Motor Division from 4/1/71 to 4/10/73 and Zone Manager in Atlanta, Ga. from 1967 through 1973 (hearing 4/10/73 Gordon 152-3);

(e) Walter Gray, Fleet Sales Manager, New York Region, Pontiac Motor Division (Karney 14) at least during 1967-8;

(f) Albert T. Olson, Jr. (see ¶ 7 above), Assistant General Sales Manager, Fleet, Chevrolet Motor Division from mid-1968 to mid-1969 (Olson 2);

(g) John D. Rock (see ¶ 7 above), Fleet Sales Manager for Buick Motor Division in Flint, Michigan during 1965-66; Director of Fleet Sales for Buick Motor Division from 1/1/67 through 7/30/68; Eastern Regional Manager for Buick Motor Division, White Plains, N.Y. from 1/1/74 to 9/30/74 (Rock 3);

(h) David Speece, Fleet Representative for the fleet department of the Chevrolet Division in the Philadelphia Zone, or a region within the Zone (Berg 28). His superior was the Chevrolet Manager for Speece's Zone or Region (Berg 29); and

(i) R. Lee Courthey, Assistant Manager, Fleet Sales Department, as of 12/12/67, Philadelphia Chevrolet Zone, apparently (GM Doc. 345).

C. The Purported Functions of the Fleet Section and Divisional Fleet Departments.

10. The purported functions of the Fleet Section of the corporate Marketing Staff of GM are to create policies for GM to keep GM competitive in the fleet market (Rock 6). The corporate staff (Fleet Section) has the responsibility for evaluating the market, determining what is needed by the Divisions as marketing tools, making these recommendations to the managemen of GM, and then carrying out the decisions of GM's management (Rock 25). A company reselling cars is claimed to have no relevance to the fleet area of GM's business (Rock 6). The Fleet Section does not advise or communicate directly with the GM dealer (including GM-owned divisions, such as Midtown Chevrolet-Pontiac) and the Fleet Section does not advise the Divisions or Divisional Fleet Departments to communicate with dealers relating to what persons the dealers should do business with (Rock 70).

11. The Fleet Section is also in the business of generating fleet sales for the 5 Divisions. Berg says that personnel of the Regional Offices of the Fleet Section solicit fleet certificate applications from companies which do not have a fleet certificate (Berg 22). The fleet certificate is a marketing tool (Rock 40). The fleet certificate is used to identify the fleet customers, defined by GM to be one who purchases for his own use or for rental or lease to others at least 20 units per year (41). But the Fleet

Section never solicited any resellers of cars to apply for a fleet certificate Berg 22).

12. Rock says that the function of the Divisional fleet departments is to take the corporate policies and implement them within the Divisions and their car dealers (Rock 25). This means the Divisions are to stimulate fleet sales, as "fleet" is defined by GM. Personnel of the Division solicit fleet applications from companies not holding a fleet certificate (Berg 22). Rock says that Buick ran fleet advertising and the coupon requests were sent to the Buick Zones and the Zones would refer the coupons to the Buick dealers in the area where the purchase decision of the prospective fleet purchasers was to be made (Rock 89-90). Olson says that the Divisional fleet employees would contact fleet users to obtain applications for a fleet certificate (Olson 93). Rock says that the Divisional fleet departments contact prospective fleet purchasers on a regular basis (Rock 89). The purpose of this contact is for the most part to try and influence that user towards that Divisional nameplate (Rock 90).

13. The applications for fleet certificates received by a Divisional Fleet Department would be transmitted to the Fleet Section for approval and issuance. Only the Fleet Section had the authority to issue a fleet certificate (Olson 7 and 96). The Divisional fleet department (including both the Central Office and the Zone) has the authority to recommend disapproval (Berg 29-30 and see Fleet Certificate Application GM Doc. 706).

14. The Divisional fleet departments had no authority to advise franchised dealers not to do business with any type of customer (Rock 70). Rock does not believe that the Divisional fleet departments had the authority to withhold delivery of cars marked "fleet" when they were ordered by a GM dealer for a non-fleet customer (Rock 70-1).

D. Fleet Certificates.

15. The fleet certificates are issued by the Fleet Section only to companies which "qualify" under the rules established by the Fleet Section. See GM Doc. 3-8, called: "Procedure for Handling Requests for General Motors Fleet User Certificate", revised 11/72, prepared by the Fleet Section; also see the Fleet Certificate Application (GM Doc. 706). These qualifications are:

"1. The company must be a responsible business organization, preferably one operating nationally, regionally or over wide areas.

"2. It should have sufficient company-owned motor vehicles to require the purchase of a minimum of twenty passenger cars and/or trucks of any and all makes every year.

"3. Association or cooperative types of organization are not qualified for the purpose of covering purchases by their individual members of (sic) member companies." (Procedure for Handling Requests, GM Doc. 3-8, which states "CONFIDENTIAL (For Internal Use Only)") It should be noted that the Fleet Certificate itself does not refer to the qualifications set forth at ¶¶ 1 and 3 above, which qualifications seem totally inconsistent with GM's testimony that the purpose of the fleet certificate is to provide marketing statistics. The requirements would seem to prevent the alleged purpose from being achieved and render the fleet certificate useless as a marketing tool. The real purpose can be seen, however: To define a wholesale market which GM will permit its dealers to sell to, once GM has put a company on the list of approved wholesale purchasers. The Procedure for Handling Requests unabashedly states that holders of fleet user certificates may buy "repair parts ... at prices similar to those accorded to wholesale customers ... to be used exclusively in the repair of company-owned vehicles." (GM Doc. 4). As to the requirement of 20 vehicles to be purchased each year, see Berg 31 and GM Fleet User Certificate expiring 12/31/68. Twenty has always been the number required for a fleet certificate (Rock 34).* The use contemplated by the fleet certificate is rental, leasing or commercial use (such as a fleet of repair trucks owned and used by New York Telephone Company). The type of use is identical to the use required to qualify a company for fleet rebates under the GM fleet rebate program (see § N and Chev. Plans '67-70). The requirements for fleet plans and certificates are established by the Section.

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* 20 required in 1967 GM fleet plan, GM's first plan. [illegible]

16. It is indisputable that a reseller of automobiles not franchised by GM such as Nabcor and its franchisees is not a "user" and, therefore, does not qualify for a fleet certificate (hearing 3/19/73 Collier 181 and hearing 4/10/73 Gordon 205). Olson knows of no non-franchised resellers or list of resellers who obtained a GM fleet certificate (Olson 119). Olson does not know whether GM's franchisees are issued fleet certificates, and does not know who would know (Olson 117-8).

17. A company otherwise qualified for a fleet certificate would not be disqualified for the fleet certificate if part of its business consisted of reselling new automobiles (Berg 14 and Olson 63). GM had no policy from 8/1/68 through 12/31/73 as to whether qualified leasing companies could engage in reselling of new automobiles (Rock 20). Leasing companies giving an option to purchase for $1.00 at the end of 3 years would be qualified for a fleet certificate (Olson 49-50).

18. The fleet certificate is a marketing tool (Rock 40) and is not used by the holder to obtain anything (hearing 3/19/73 DuPuis 150). However, the certificates themselves conflict with this testimony: "sales of parts, otherwise eligible for parts wholesale compensation, by authorized General Motors dealers to User for use in repairing or servicing of company owned vehicles will be considered as 'Qualified Wholesale Parts Sales' under the General Motors Wholesale Compensation Plan." GM "upon User's request (will) furnish User with Repair Manuals and Service Bulletins that may be

available for the purpose of assisting User in the repair of such General Motors vehicles". "The facilities of General Motors Training Centers, located in and serving thirty major areas, are available for the purpose of training User's mechanics and shop personnel in the repair and maintenance of General Motors vehicles". 1968 Fleet Users Certificate. GM gives fleet purchasers the opportunity to service vehicles sold to them, but no such plan was available to Nabcor and, as was seen in Parts III and IV above, GM's franchisees did not provide the warranty work either. Also, Procedure for Handling Requests states that the "purpose of the General Motors Fleet User Certificate ... is to render them various services in the operation of their fleets." Non-qualified persons "do not qualify for any of the benefits of the Certificate." "All purchases by the Fleet User under the Certificate are made from authorized General Motors dealers on terms and conditions mutually agreed upon between the dealer and the Fleet User." Actually, this would not appear to be followed, inasmuch as GM would not let dealers sell to Nabcor out of the fleet allotment. Because of the problems GM has been having with persons who desire a fleet certificate, undoubtedly, GM has the following warning to its own personnel (which would hardly seem necessary unless the fleet certificate has an advantage to the applicants for issuance thereof): "AVOID ANY COMMITMENTS CONCERNING CERTIFICATES To eliminate any possible misunderstanding with Fleet Users, it is important to avoid any commitment concerning the Certificate. Complete information is furnished each Fleet User by the General Motors Fleet and Government Sales Section, an any interpretation of the conditions or procedures in connection with the Certificate should be handled by them." (GM Doc. 6).

19. Each of the fleet certificates for the years 1968, 1969, 1970, 1971 and 1972 has a blank for a fleet number to be inserted by the

Fleet Section, but Olson cannot remember whether the certificates have a number or not (Olson 111). The summary of the testimony in Parts I and II above shows that numerous times the GM dealers asked Nabcor for its fleet number or whether it had a fleet certificate. Inasmuch as there was no list of holders of GM fleet certificates according to Collier (hearing 3/19/73 169)*, the numbers on fleet certificates could only have meaning to the dealer if they were asked to obtain Nabcor's fleet number by the GM Zone. Such a request would only have meaning to GM in connection with its determination as to whether the dealer would obtain a fleet allotment to supplement the dealer's retail allotment (see §§ H-M below). The information was of no value to the Fleet Section, according to testimony by GM officials, inasmuch as they weren't at all concerned with sales to resellers.

E. The Fleet Certificate is Not a Marketing Tool.

20. GM claims that the fleet certificate assists GM and its dealers in making sales to fleets (as defined by GM to exclude sales to resellers such as Nabcor). Dealers who were trying to sell a fleet user hoped that the issuance of a fleet certificate might make the fleet user more receptive to doing business with the GM dealer (Olson 94), even though the certificate is issued in the name of GM (Olson 94). A customer relationship develops from the issuance of a fleet certificate because it identifies a substantial customer (Olson 95). However, dealers would try to sell cars on a fleet basis without knowing of the lack of a certificate (Olson 93). Also, the identities of all companies qualified for a fleet certificate were available to the dealer through R. L. Polk Registrations (Olson 14 and Rock 63). FM will testify that dealers could and did purchase R. L. Polk Lists for their own area of sales responsibility. Also, the certificate did not say how many cars the holder bought each year, or what make. (See the fleet certificates for 1967-1972). The R. L. Polk Registration List did

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* [illegible] 218

provide this material information. In short, the fleet certificate was an unnecessary obstacle which did in fact prevent Nabcor from getting cars.

21. The Fleet Section prepared no statistics at all, and the only statistics it has are a list of automobile and truck registrations in the United States compiled by an independent organization, R. L. Polk, called the "Polk Registrations". Olson said that market forecasting is less then precise and the best available data was the R. L. Polk statistics on registrations (Olson 14). The Fleet Section yardstick continued to be the R. L. Polk registration book (Rock 63). The only market analysis by the Fleet Section regarding persons who leased fleet cars was from the R. L. Polk statistics which did not separate rental from lease (Olson 4). GM has no studies which support or refute the idea that leasing is a plus business for the franchised dealer, other than the R. L. Polk registrations (Rock 107). GM cannot conclude from the R. L. Polk registrations that a car put out on lease does not reduce retail sales by one unit (Rock 107). GM cannot conclude from the Polk Registrations whether a lease affects the retail sales potential of the dealer (Rock 108). The only reason that "leasing is a plus" is that the dealer will lose that segment of the market if he does not participate in it, and you don't need R. L. Polk Registrations to reach that conclusion (Rock 108). The information about fleet accounts obtained by fleet personnel at the zone level is insufficient for GM to make other than a statistical guess (Rock 103). Even if GM sees from R. L. Polk that Hertz bought 90,000 cars last year, we don't know how many were rented or leased (Rock 103-4). Sometimes they will buy 2 cars in a year to double cycle in rental (Rock 104), which makes it difficult to analyze the fleet market (Rock 104). The common marketing tool is the R. L. Polk Registrations (Rock 104) and they cannot answer this (Rock 104).

22. Rock will testify further that the Fleet Section had discussed whether fleet sales reduce the overall retail market available to GM dealers (Rock 105), a discussion relating to the growth of leasing (Rock 105). The Fleet Section concluded that leasing would not affect retail sales in any appreciable sense (Rock 105), but this was mostly gut reaction (Rock 105) because of the lack of statistics one way or the other (Rock 105). GM has never concluded that the number of wholesale orders of a GM dealer would increase by the number of cars he sold to leasing companies (Rock 105-6). GM has never analyzed the question of whether leasing is "plus business" (Rock 106). Leasing has grown at the same level as the gross national product, and shows a current retraction with the decline of the market (Rock 106). GM doesn't have a statistic on whether the growth of leasing has been greater than the growth of overall car sales from a percentage standpoint (Rock 106). By leasing being a "plus", Rock means that a dealer who commences a program of leasing cars is not going to be leasing cars to people who would otherwise be retail customers of his (Rock 107).

23. Rock will testify further that the fleet certificate is an identification tool, which is why GM has the fleet certificates (Rock 104). But not everyone who is qualified for a certificate wants a certificate (Rock 104). GM does not have the certificate computerized (Rock 104). GM does not have the ability to use the fleet certificate to determine what GM's fleet market is (Rock 104). Rock is unaware of any statistics, studies or other analyses of users themselves other than the information obtained through the GM fleet certificates (Rock 104-5). GM has no reports or analyses which analyze the type of persons who enter into lease agreements with qualified leasing companies (Rock 102). The Fleet Section has not tried to analyze the market for leases (Rock 102). GM doesn't have the statistical ability

to split out leasing from rental (Rock 102). The ability to identify the market for fleet sales is difficult because GM cannot identify the market for the lessee (Rock 102-3). So it's a guess (Rock 103). It would be as difficult as a person trying to take a list of 50 companies in the United States and trying to determine which are leasing companies and which are rental companies Rock 103).

24. Olson will testify that the end user was not irrelevant in analyzing the market for fleet sales, but the Fleet Section made no attempt to determine who the end user was (Olson 5), even though market analysis was one of the functions of the Fleet Section (Olson 7).

25. DuPuis will testify that he does not know why GM issues the fleet certificates, other than for information for use by the GM Marketing Staff (hearing, 3/19/73 DuPuis 151).

26. The foregoing ¶¶ 20-25 prove that the fleet certificate serves no worthwhile purpose for GM, the GM dealers or the owners or users of cars bought from GM dealers, particularly in view of the fact that companies must qualify to obtain the certificate. Testimony that the certificates give nothing of value to the certificate holders further points out the de facto, illegal use to which the fleet certificates are being put — to prevent non-franchised resellers of cars from obtaining sources of supply from willing GM dealers and preventing willing GM dealers from obtaining the fleet allotment for such sales from GM. The testimony that the fleet certificates are a marketing tool is not believable, because GM admits that the statistics on which issuance of the fleet user certificate is based is available to anyone (including the GM Fleet Section) from R. L. Polk's Registration List. Accordingly, the fleet user certificate adds

nothing except a scheme for preventing Nabcor and its franchisees from getting GM cars for resale and lease.

F. Fleet Business is "Plus Business".

27. See ¶¶ 21-23 above for testimony relating to the statements made by GM officials to GM dealers that fleet business is "plus business" for the dealers, to encourage the dealers to engage in sales to leasing companies, as FM will testify. FM will also testify that such statements are false and misleading because the fleet sales are made at little or no profit to the dealer while taking away a retail sale which the dealer would have made at a gross profit of perhaps 20 times as much. Rock claims there are no reports known to Rock indicating whether or not fleet sales reduce the number of anticipated retail sales which otherwise would be made (Rock 101). Rock also testified that it is a matter of Divisional policy as to whether GM officials are to advise GM dealers that fleet business is "plus business" for the dealers (Rock 101).

G. Application for Fleet Certificates.

23. An application for a fleet certificate is made to GM by a GM dealer or a customer of a GM dealer (Olson 93, Berg 22 and Rock 90). Personnel of the GM Regional Office of the Fleet Section or of the Divisional Fleet Department would solicit applications from prospective fleet purchasers (Berg 22), but not from Nabcor or any other reseller (Berg 22). The application for a fleet certificate states that the information is to be filled in only by a representative of the Fleet Section, but a pad of such forms was in the possession of Colonial Cadillac (hearing, 3/19/73, Murray 21-22, Plaintiffs' Exhibit 1).

29. The "Request for General Motors Fleet User Certificate" (GM Doc. 708) states that the form is "to be used and filled on only by G.M. Division representatives". Also, it states "if affiliation with an automotive dealership exists explain fully — use separate letter if necessary." This instruction is irrelevant except to prevent issuance to affiliates of resellers. Also, the Request requires the recommendation of the Zone office of the Division involved, and the Central Office of such Division, as well as the final approval by the Fleet Section. It seems difficult to believe that affirmative recommendations have to be made before GM can introduce the gathered statistics into its non-computerized data system, particularly when the information about the "number of company owned cars and trucks" is available anyway from R. L. Polk. Also, a copy of the completed form is sent to the Regional Director for the Fleet Section (according to the form instructions) prior to issuance of any certificate. The inference is that the information itself independent from any certificate is acted upon by the Regional Office, particularly as to companies such as Naboor. The application serves to give GM information about competitors other than what is available through R. L. Polk, and once obtained the information is used against the applicant, by shutting off sources of supply.

30. A Dun and Bradstreet report is required by the Fleet Section for each applicant for a fleet certificate (Rock 71-2, Olson 67). Olson doesn't know why this was required (Olson 67) and does not know what the Fleet Section did with the information it received (Olson 67). The requiremen was there when Olson took office (Olson 67). The information, according to Olson, was not conveyed to the dealer through whom the fleet purchaser bought cars (Olson 67). Olson states that the Fleet Section did not screen applicants for a fleet certificate from a credit standpoint, absolutely not

(Olson 66), although the information to some degree could tend to impune the applicant's credibility (Olson 65). The credit of the user is not a factor taken into account when issuing a fleet certificate (Karney 73). Karney said that the Fleet Section obtains a D&B report on applicants to verify the address and location of the premises and to be sure it's a business; we want to be sure if we're going to execute an agreement with the company (once again, a mistaken reference to the old fleet agreement requiring the holder of a fleet certificate not to resell the cars as new cars), a certificate, that it is a business concern, properly located, because a GM employee is going to make the certificate presentation (Karney 71-72). Olson states that he does not know whether a poor D&B has ever resulted in a turndown for a fleet certificate (Olson 102). It seems clear that the Fleet Section is doing more than obtaining information about the number of car purchases when it investigates applicants for a fleet certificate, and that this investigation is to ensure that resellers are not permitted to get a fleet certificate even if they otherwise qualify.

31. United Auto Brokers Corp.'s president, Arnold Wonsever, will testify that UAB was turned down once by GM for a fleet certificate, and that an application outstanding for several months has not been acted upon. UAB still has no fleet certificate. (See foundation testimony, Part III.)

32. The purpose of the fleet certificate seems to be more than what GM admits to. The purpose seems to be to prevent resellers from getting cars for resale, as an illegal continuation of the outlawed fleet agreement.

H. Fleet Allotments or Fleet Reserves.

33. The term "fleet allotment" or "fleet reserve" (synonymous terms - Karney 9 and Berg 32) is the amount of new-car production during a

period of one week set aside by GM to fill fleet orders submitted by dealers who request additional cars to supplement their retail allotment. According to Olson, reserves from total anticipated production are set aside so dealers will be encouraged to provide cars to meet the needs of individual fleet users (Olson 13). Berg states that the purpose of the fleet allocation is to handle the large customers that the franchised dealer's retail allocation will not handle (Berg 37). (Why does GM have to encourage its dealers to provide cars to qualified fleet purchasers, to discourage sales to resellers?)

34. Allotments are only important when sales by the dealers near GM's capacity to manufacture or go beyond (Rock 68). An allotment for fleet has much less meaning when there is no shortage of cars to meet retail orders (Rock 83-4). GM does admit that the fleet reserve decreases the number of cars available to GM dealers for retail resale (Olson 13-4).

35. The production of the cars to be delivered to the dealer under the fleet allotment is "preferenced off" when the GM Zone or Division sends the production computer card for the ordered car into the factory and asks that the factory enter this card into the production system (Rock 80-81).

36. If a GM dealer has a retail allotment of 10 cars and asks for 12 retail cars, the remaining 2 cars are added to his retail allotment for the next month (Rock 81-2). The effect is that if the 2 cars were to be supplied out of the fleet allotment, the cars would be received together with the 10 cars, but if the cars must come out of the dealer's retail allotment, he doesn't get them until the following month (as part of the dealer's 10 cars for the month).

37. Rock states that eligibility as a fleet purchaser under one of GM's fleet rebate plans had nothing to do with the fleet allotment (Rock

56). Also, Rock claims that having a fleet certificate has nothing to do with the fleet allotment (Rock 56). There is no corporate policy on how the fleet allotment is to be made (Rock 57).

38. Berg, however, states that a company submitting an order for 500 cars and not qualified for a fleet plan or fleet certificate would not be able to obtain a fleet allotment because without the required number of registrations the company would not be a "fleet".

39. Rock states there was no Fleet Section policy during 8/1/68 through 12/31/73 to advise franchised dealers not to do business of a fleet nature with resellers or other non-qualified fleet purchasers (Rock 69).

40. The corporate Fleet Section never conducted any audits of the Divisional fleet departments to determine what the Divisions did with the fleet allotments (Rock 63), in spite of the testimony that audits are always conducted by GM any time money changes hands, such as with the fleet rebate program. Fleet sales to dealers is 15% of GM's total car sales

41. Fleet purchasers do not advise GM about their anticipated needs for specific types of cars, such as GM, Chrysler, Buick, Ford, etc. (Rock 72). The allocation of the fleet allotment is based in part on the R. L. Polk Registrations and the allocation of the fleet allotment occurs once the GM dealer, after inquiry, concludes a fleet transaction (Rock 72). This points out how Nabcor was getting stopped. After a dealer called the Zone to obtain a fleet allocation, he was told by the factory that he was not going to get the allocation. Then the dealer got back to Nabcor, saying that he could not get any cars, or that he was told not to deal with Nabcor, or that the cars must come out of his retail allotment (see Parts III and IV

42. Berg states that the Fleet Section would work continually with fleet purchasers or prospective fleet purchasers prior to the commencement of the production for a model year to obtain an estimate of the number of vehicles they would be interested in purchasing (Berg 34). Berg says this is done through the personnel of the Regional Offices of the Fleet Section (Berg 34).

43. Each division of GM determines its own policy on how a fleet reserve may be used, and this authority was not supposedly derived from the Fleet Section (Olson 31). Any requirements by GM for the fulfilling of a dealer order marked fleet was not in the Fleet Section, but was a Divisional function (Olson 104). If the holder of a fleet certificate reports a delay in shipment or a service problem, the Fleet Section would advise the Division of the problem and hope that the Division took care of it (Olson 11). There was no policy as to any maximum percentage of production which could be set aside for fleet reserves, and even 100% could be set aside (Olson 14).

I. Chevrolet Division and the Fleet Allotment.

44. Berg testifies that from 7/69 through 12/70, fleet allocations for Chevrolet were established by looking at historical markets and production schedules. Fleet allocations were the number of units to be made available to dealers for resale on a fleet basis (Berg 33).

J. Buick Motor Division and the Fleet Allotment.

45. Rock testifies that during 1963-5, the Buick Motor Division determined the amount of cars to be reserved for the fleet allotment on the basis of the anticipated orders from qualified fleet purchasers only (Rock 58), which excludes Naboor. If the selling dealer had a retail allotment for the month of say 50 cars, and a fleet order came in for 100 cars, the

Buick dealer would request his GM district manager and ultimately the GM Buick Zone Manager and the Buick fleet department to give the dealer an additional 100 cars from the fleet allotment of the Buick Zone (Rock 59). If the fleet order was only for 3 cars, say, and the dealer delivered the cars out of his retail stock, the dealer could request repayment of the 3 cars from the Buick Zone, out of the fleet allotment (Rock 59-60). Rock testifies that the Buick Division does not set aside a stated number of cars for specific fleet accounts (Rock 73). Buick has a percentage of production set aside for fleet distribution each month, on a first come, first served basis (Rock 73). If the Buick factory has no great amount of orders from dealers during a given period, the fleet allotment may not be utilized, and it would be turned back by the Buick Zone to the Central Office of Buick each week (Rock 75).

46. If the Buick dealer sells a Buick to a fleet account and does not check the fleet box on the Buick wholesale order form, there was no way the factory would know that the dealer was making a fleet sale (Rock 75-6). Only the production computer card which forecasts the date of production would reflect whether the car was "fleet" or "non-fleet", and the computer card would conform to the Buick dealer's wholesale order form (Rock 76). The fleet box on the form during 1974 means that the customer is a national account or a local account designation, not necessarily a holder of a fleet certificate (Rock 115), or a company which would qualify for a fleet certificate (Rock 115). The box is intended for companies which purchase cars for the conduct and use in their business (Rock 116), not companies such as Nabcor. A reseller would not be a customer for whom Buick orders would be marked fleet today (Rock 116).

K. Cadillac Motor Division and the Fleet Allotment.

47. Fleet sales to Cadillac dealers are made by allocations to the dealer, earmarked as fleet sales (hearing 4/10/73 183-4). Each allocation bears the name of the fleet purchaser (Gordon 184). The fleet purchaser can take his allocation and use it through another dealer (Gordon 184-5). The final decision on fleet allocation in the Philadelphia Zone is made by Gordon, the Zone Manager (Gordon 186). He also makes the retail allotments to the Cadillac dealers (Gordon 186). Gordon is advised by Detroit how many Cadillacs the Philadelphia Zone is going to be allocated by GM for retail resale (Gordon 191). Gordon then allocates this retail allotment among the dealers in his Zone (Gordon 191). During the latter part of July, Gordon requests his dealers in the Zone to submit their fleet requirements for the coming model year (Gordon 193). Then Gordon figures out the fleet allotment, and sends the results to Detroit. Then, Detroit gives Gordon the amount of the Zone's fleet allotment, which is usually lower than the leasing companies project they need (Gordon 193). Then, Gordon establishes the fleet lease allotment and mails it to the leasing companies and Cadillac dealers in September (Gordon 193). Because of the heavy retail demand for Cadillacs, no Cadillacs are allocated for leasing purposes during September and October. (Gordon 193). When Gordon mails the regular monthly allotment to each of the Cadillac dealers, the number for each month in footnoted to indicate how many within such number for the month includes the allotment for fleets (which number had previously been established at the outset of the model year). (Gord 194). Cadillac does not accept applications for fleet allotments from the fleet purchasers themselves. Gordon accepts applications only through the Cadillac dealers (Gordon 196).

48. A reseller of automobiles does not qualify for a fleet allotment (Gordon 205). A Cadillac dealer is permitted to use his fleet

allotment for any purpose after it has been allotted to him, even to make retail sales (Gordon 207, 210). Once the dealer gets the car, he can do anything with it including sell it to some other customer at retail (Gordon 211). An order of a Cadillac for New York Telephone's allocation is not a promise by the dealer to sell the car to New York Telephone (Gordon 211). It is true that Nabcor can't get a fleet allotment or a fleet certificate (Gordon 213).

49. Collier testifies that the fleet allotment relates to specific ultimate companies, such as Hertz and Avis (hearing 3/19/73 167).

50. DuPuis testified that Cadillac factory makes available cars on a fleet allotment basis to purchasers who do not have a fleet certificate, but DuPuis does not know of any such purchasers (hearing 3/19/73 140). A fleet allotment is an allotment given to a Cadillac dealer handling a fleet company as requested by a Cadillac dealer (DuPuis 141). A specific allotment is made for such customer by the Cadillac Zone (DuPuis 141-2). The allotment is requested by the Cadillac dealer so that he does not have to supply the cars out of his retail allotment (DuPuis 142). The allotment could be as little as one car (DuPuis 144). Although each such purchaser does not have a fleet certificate, DuPuis cannot name any persons purchasing through fleet allotments who do not have a fleet certificate (DuPuis 144). The Central Office for Cadillac provides the allotment of Cadillacs to the Zone for fleet and for retail resale to the dealers (DuPuis 132). The Cadillac Zone then allocates to the Cadillac dealers the number of cars for the dealer's retail allotment (DuPuis 133, 136).

L. Dealers' Wholesale Cars for Resale to Nabcor Are Not Eligible for the Fleet Allotment.

51. Rock testified that whether or Nabcor would be able to

buy cars through the fleet allotment was a matter for each Division to handle (Rock 20). Berg testified similarly, except that he said the allotment would not be available at all (Berg 38). Nabcor does not qualify for any Cadillac fleet allotments (Gordon 205, 213).

M. Economics of the Fleet Allotment.

52. GM will testify that it has 12,000 franchised dealers selling 4,000,000 to 5,000,000 new cars per year, or about 200 cars per year each, on the average. GM will testify that the average monthly overhead of a Chevrolet or Pontiac dealer selling 200 cars per year is more than the gross profit of about $100 per car on all of the cars if sold at retail. GM will testify that the 200 car dealership would have a September and October allotme of around 30 cars for each of the two months. If all of this dealer's retail allotment were sold to Nabcor on a fleet basis of approximately $25 over tissue, the GM dealer would go broke unless GM gave the dealer additional cars to use in filling the dealer's retail orders. Accordingly, the dealers are prevented from selling cars to Nabcor on a fleet or wholesale basis because of GM's unwillingness to supply the cars solely because the cars are to be resold to Nabcor for resale.

N. GM's Fleet Rebate Program (now discontinued) and Other Fleet Plans.

53. GM sells all of its cars to GM dealers at the same price, other than for the fleet rebate program. No concession whatever is made for volume. The GM dealer pays the same price for a given car as any other dealer whether he purchases 1 or 1,000,000 cars (Rock 45) and whether the order is designated fleet, retail or stock (Rock 110).

54. Nabcor commenced its automobile brokerage business in 1/66 or earlier, and Nabcor's first car order (for manufacturing by GM according to Nabcor's specifications) was for 1967 models, GM will testify.

55. Fleet rebate plans came into effect for the model years 1967 through 1970, but not subsequently (Rock 48, Karney 28-9). The plans provided that GM dealers were given a rebate if they sold cars to qualified fleet purchasers and this rebate was not available on sales to volume purchasers who were not qualified fleet purchasers (Rock 46-7). The dealer could designate that the fleet rebate be paid directly to the qualified fleet company (Rock 48). See Chevrolet Plans for 1967, 1968, 1969 and 1970.

56. The dealer's cost for the car was less when he resold it to qualified fleet companies (Rock 46-7). Annual purchases of 20 cars in 1967.

57. The GM Divisions were responsible for the entire administration of the fleet allowance program (including the determination of who was entitled to receive the fleet allowance), (Rock 85).

58. The fleet rebate, together with other marketing restrictions adopted by GM after Nabcor was commenced, particularly in the warranty area, should be viewed as evidence supporting the conspiracy alleged.

O. Fleet Certificate Means Enough for GM to Exert Substantial Effort to Prevent Nabcor from Obtaining It.

59. Although GM claims that the fleet certificate is not required to permit a company to make fleet purchases from GM dealers, and that the fleet certificate is of no benefit to its holders, GM went through a substantial effort to turn down Nabcor's application. If the certificate had been granted to Nabcor, GM could have marked the certificate on its own books as meaningless, if in fact the fleet certificate would have been meaningless to Nabcor.

60. The GM officials who were involved (and the GM documents which they prepared, reviewed or which referred to them) are as follows:

(a) Edward P. Belcher, Assistant to Frederic G. Donner, Chairman of the Board of GM, GM Docs. 668, 669, 674, 685, 690, 749, 750-1, 752-3, 756-7;

(b) Robert L. Berg, Director of Fleet Section, 149, 150, 151, 278-9, 280, 679, 680-4, 754;

(c) Edward N. Cole, GM President, GM Docs. 755-7;

(d) Crawford, Mr. H. E., high GM official on the corporate staff who suggested that Chevrolet Sales Manager send information on Nabcor to President John M. Roche, GM Docs. 654-7;

(e) Crowley, Mr. P. J., on the GM Legal Staff in Detroit, 223, 224, 741-2, 749 and 754;

(f) Courthey, R. Lee, Assistant Manager, Fleet Sales Department, Philadelphia Chevrolet Zone, GM Doc. 345;

(g) DiSimone, Robert M., Regional Director of the Philadelphia Field Office of the Fleet Section, 156, 679, 680-4, 726-7;

(h) Donner, Frederic G., Chairman of the Board of GM, 654-7, 668, 685, 749, 750-1, 752-3, 756-7;

(i) Dunham, Herb., City Manager, Fleet Department, Philadelphia Chevrolet Zone, GM Doc. 345;

(j) Feely, Emmett P., high GM official on the corporate staff who wrote to Crawford, GM Docs. 654-7, 788-95;

(k) Fogg, Mr. D. M., Fleet Representative, New York Chevrolet Fleet Department, New York Chevrolet Zone, GM Docs. 698-701, 704;

(l) Foley, E. D., high GM official in the Sales Section in Detroit, GM Docs. 788-95, 798;

(m) Frink, G. R., Administrative Assistant to the Director, Fleet Section, GM Docs. 732-6;

(n) Gilliatt, Sidney G., official in the GM Sales Section, Detroit, GM Docs. 169, 788-794;

(o) Gray, Walter, Representative in New York Pontiac Zone, GM Doc. 151;

(p) Higgins, J., GM Legal Staff, Detroit, GM Doc. 261;

(q) Hogan, Mr. G. B., Fleet Sales Manager, Fleet Sales Department of Pontiac Motor Division, GM Docs. 172-3, 174-5, 182-5;

(r) Karney, Nelson M., Regional Director, New York field office of the Fleet Section, GM Docs. 142-6, 149, 150-1, 155, 672-76, 677-8, 685-7, 690-7, 698-701, 702-19, 728-37, 740-45, 749-7;

(s) GM Legal Staff, GM Docs. 182, 203-4, 220, 223-4, 261, 276-7, 278-80, 289-91, 655, 669, 701, 735-6, 749, 754, 796-7, 804-5;

(t) Marguerite, Secretary to J. J. Owens, Director of the Fleet Section, GM Docs. 142-6;

(u) Murphy, R. F., either GMAC or Legal Staff in Detroit, contact with Belcher on 12/15/67, GM Docs. 669;

(v) O'Connor, R. M., Sales Manager for Chevrolet Motor Division, GM Docs. 147-8, 224, 654, 655, 720-5, 795, 801;

(w) Olson, Albert T., Director of the Fleet Section, GM Docs. 677-8, 686-7, 699, 702-5, 710-9, 726-7, 732-4, 737, 740-2, 745-6, 750-1, 754-7;

(x) Owens, Mr. J. J., Director of the Fleet Section, GM Docs. 142-6;

(y) Power, Aloysius F., GM General Counsel, GM Docs. 223-4, 655;

(z) Roche, John M., GM President, GM Docs. 147, 654, 657, 683, 749-3, 756-7;

(aa) Sattler, Herman P., high GM official in the corporate staff who communicated with Belcher, GM Docs. 668, 677-8, 685-7, 690, 741-2, 754;

(bb) Speece, David, Fleet Representative, Philadelphia Chevrolet Zone, GM Docs. 679;

(cc) Thede, J. C., GM General Counsel or on Legal Staff, GM Docs. 289-90, 276-7, 278-9, 280, 804-5;

(dd) Vivian, Secretary to Sidney G. Gilliatt, of GM Sales Section in Detroit, GM Docs. 788-94;

(ee) Wackerman, Joseph G., GM Legal Staff in New York, GM Docs. 701

(ff) Womack, Kenneth C., Zone Manager, Buffalo Chevrolet Zone, GM Docs. 339-40, 630-4, 726-7; and

(gg) Yost, Miriam, Secretary to Nelson M. Karney, Regional Director of the New York field Office of the Fleet Section, GM Docs. 142-6, 150-3, 702-

61. The events surrounding Nabcor's request for a fleet user certificate have been summarized under ¶¶ 10-20B of FM's foundation testimony above. The documents produced by GM (indicated by a number or numbers in parentheses) evidence the following events (which should be read in conjuncti with FM's testimony):

On 12/12/67, Courthey and Dunham discussed Nabcor as a situation confronting the Fleet Department in the Philadelphia Zone, that Nabcor was advertising franchises in the New York Times and guarantying delivery of GM cars, and that a Philadelphia dealer delivered 1967 Chevrolets to Nabcor as a purported fleet user under the GM Fleet Plan, but Nabcor says its brokers are leasing the cars. Durham is planning to have the Fleet Representative contact Nabcor "and to alert the dealers concerning the situation". Courthey will refer the matter to the Zone Manager. (345)

On 12/13/67, Speece and DiSimone pay an unannounced visit to AM in Nabcor's Jenkintown office to discuss Nabcor's eligibility for a fleet user certificate. Nabcor was advised it did not qualify for the fleet certificate because Nabcor did not register 20 new cars in Nabcor's name each year. AM stated that Nabcor was not then seeking any rebates under any of the GM Fleet Plans, and that its arrangements with various GM dealers were satisfactory to Nabcor. Speece and DiSimone obtained a copy of Nabcor's form of lease agreement. (679)

On 12/14/67, FM telephoned the office of Board Chairman Donner in New York and spoke with Staff Ass't Belcher. They arranged for a meeting at 4 PM (668) At 4 PM, Belcher and FM met for 15 minutes. FM outlined the Nabcor business: auto leasing, brokerage and sales of new cars which Nabcor buys from authorized dealers. FM complained about the difficulty in getting cars, especially in the Buffalo area where Chevrolet District Managers of the Chevrolet Zone have spread the word to GM dealers not to sell to Nabcor. Nabcor requested a fleet certificate or other arrangement agreeable to GM. Belcher said he would call Detroit to relay the request (668, 685).

On 12/14/67, Belcher called Sattler in Detroit, who said that he will have someone contact FM (668, 685).

On 12/15/67, FM called Belcher again to inquire about fleet financing of daily rental cars (669).

On 12/15/67, Belcher asked R. F. Murphy, ~~either~~ of GMAC ~~or the GM Legal Staff~~, to have someone from GMAC contact FM (669).

On or before 12/15/67, Olson asked Karney to communicate with FM (677, 691).

On 12/15/67, Karney met alone with FM in Nabcor's office in the New York GM Building, advising FM that the meeting resulted from FM's recent meeting with Belcher. Karney requested information regarding Nabcor and its operations, which was supplied. FM advised that he was experiencing difficulties in some areas with GM car dealers failing to honor their commitmen including the Buffalo situation, where a Chevrolet District Manager advised a Chevrolet dealer not to sell Chevrolets to Nabcor. FM said he wanted this to cease as it would explode into serious problems as a result of the California case involving the Chevrolet Motor Division. FM requested informati regarding the fleet user certificate, and was told the requirements. FM asked for assurance that if Nabcor met the requirements that Nabcor would be issued a fleet certificate. Karney said he could not assure this, because all approvals came from Detroit, but Karney would make Nabcor's proposal known to Detroit (670-1, 674-6, 688-9, 691).

On 12/15/67, Karney dictated to Olson over the telephone a summary (702) of his meeting with FM, which Olson reduced to letter form (670-1, 674-6, 688-9).

On 12/15/67, Olson had a discussion by telephone with Sattler about the Karney-FM meeting of 12/15/67. (677, 691).

On 12/15/67, Olson wrote to Sattler about the telephone discussion and Karney-FM meeting and asked to discuss Karney's letter when Sattler had the opportunity (677).

On 12/19/67, FM called Karney's office. Karney returned the call and advised FM that no reply had been received from Detroit to FM's request for a fleet user certificate. FM was advised that it would be the week of December 26th before information would be available (691, 702). (Note: at this time, no fleet certificate request form had been filled out by GM concerning Nabcor's request for a fleet user certificate.)

On 12/19/67, in further amplification of Olson's 12/15/67 letter to Sattler, Olson sent copies of 3 memoranda from the Fleet Section file (678, 687). (Note: the 3 memos were apparently not produced by GM.)

On 12/20/67, DiSimone wrote to Berg discussing the 12/13/67 meeting at Nabcor's Jenkintown office between AM, Speece and DiSimone (679).

On 12/21/67, DiSimone had a telephone conference with Ken Womack, Zone Manager of the Buffalo Zone (681) concerning the 9/29/67 report on Nabcor published by the Buffalo Automobile Dealers Association ("BADA") and communication by Dave Heinrich Chevrolet in Lockport, NY concerning advertising by Nabcor franchisee American Auto Brokers — offering new cars at $100 over dealer cost (681-684). Also, DiSimone reported to Olson by letter dated 1/5/68 that Womack had advised DiSimone that a Chevrolet dealership was approached by a Nabcor agent and offered an order for 200 1968 Chevrolets. The dealer told the Nabcor agent that he had never handled volume orders such as this and would like some time to consider the order before accepting it. Later the dealer advised the Nabcor agent that he could not supply cars in large quantities because he was allotted only 6-8 cars a month. The dealer refused to tell the Nabcor agent the names of the Buffalo Chevrolet Zone officials who communicated with the dealer about Nabcor's order (726-7).

On 12/21/67, DiSimone had a telephone conversation with Berg concerning Nabcor (681).

On or after 12/21/67, in response to DiSimone's telephone conversation with Womack, Womack forwarded to DiSimone a copy of the BADA bulletin on Nabcor and Nabcor's franchisees in the Buffalo area dated 9/29/67 (680-4). The BADA Bulletin stated in part:

"A RASH OF AUTO "BROKERS" HITS BUFFALO

"Ever hear of 'Nabcor'? 'Multi Make Auto Sales'? 'The Auto Livery, Inc.'? 'Dabs'? If not, you probably will. Here is some information about them.

"'Nabcor', from information which we have, was set up by two brothers, Frank and Anthony Maiorana. * * * For $5000 (or $6000) they will set up an individual in business as an automob 'broker' and they say they will obtain for him any kind of a new car that a customer may want. They obtain their cars from franchised dealers and pay them ... from $35 to $50 above dealer cost. Then they add $50 to the price before giving the car to the 'broker', who now has a car $85 to $100 over dealer cost. The 'broker' then sells it at a price to make a profit for himself. * *

"Incidentally, 'Nabcor' is registered as a dealer down around White Plains, N.Y. They also operate in the Philadelphia area. Their 'franchise' holders operate as their 'brokers' and therefore are not required to be registered as dealers. (We've gone over this with the Dept. of Motor Vehicles.)

"'Nabcor' inserted a 'business opportunity' ad in the Buffalo papers in August and apparently as a result thereof were successful in selling 'franchises' to:

"Multi Make Auto Sales, 1303 Union Road, West Seneca. The men involved are Don Bolling and Gary Kuhanek, former salesmen for Clements-Gillogly Chevrolet.

"The Auto Livery, Inc., 4444 Main St., Snyder. The men involved are Eugene Novy and Peter Mollemet. * * *

* * *

"We cannot for the life of us think of any reason why a retail dealer would want to get involved in such a scheme. It would only defeat the very purpose for which you are in business. Sure hope YOU all feel the same way.

Also, Womack forwarded a copy of a space advertisement offering new cars at $100 over dealer cost by Nabcor franchisee American Auto Brokers which had been published in a 11/67 edition of the Lockport, N.Y. Retailer. The paper had been sent by bulk mail to Dave Heinrich Chevrolet of West Ave., Lockport, NY (near the place of business of American Auto Brokers), who had transmitted it to the Buffalo Chevrolet Zone, which transmitted it to the Philadelphia Regional Office of the Fleet Section, which transmitted it to the Fleet Section in Detroit, which transmitted it to high corporate officials (680-684).

On 12/26/67, DiSimone wrote to Berg about Nabcor and forwarded a copy of the BADA Bulletion on Nabcor and the Petailer advertisement for Berg's file. DiSimone requested that a copy of the BADA Bulletin and ad be returned to DiSimone for his file (680-4).

On 12/27/67, Karney called his secretary (Ms. Yost), and asked her to set up an appointment for Karney to meet with FM on 12/28/67 (702).

On 12/27/67, Ms. Yost contacted FM who said he would be in his New York office on 12/28/67 (691, 702). Other miscellaneous contacts occurred from 12/28/67 through 1/2/68, when FM advised Karney that FM would be in New York on Thursday, 1/4/68 (691, 702, 703, 704).

On 1/2/68, Sattler wrote Belcher and enclosed several Fleet Department field reports covering Nabcor dating back to 1/67 and enclosing the Karney report of his 12/15/67 contact with Nabcor. Sattler said that he seriously doubted GM will have any further inquiries from Nabcor, and he was closing his Nabcor file (685). The "several Fleet Department field reports covering" Nabcor were not identified or, apparently, produced by GM, but may have been the documents showing how Messrs. Donner and Roche (Chairman and President of GM, respectively) and the GM Legal Department, including the General Counsel originally became involved with Nabcor (see § Q below).

On 1/3/68, FM visited Belcher (Administrative Assistant to Donner) in Belcher's office and reiterated his complaint that GM Zone personnel were pressuring GM dealers who were trying to sell cars to Nabcor. FM claimed that some Nabcor franchisees were getting set to sue GM and GM dealers. Also, FM said the problems would be avoided if Nabcor were given a fleet user certificate. Also, FM said that he expects to see Karney on 1/4/68 (690)

On 1/3/68, Belcher had a telephone conversation with Sattler concerning FM's meeting with Belcher (690).

On 1/3/68, Belcher wrote to Sattler confirming the telephone conversation and the subject of FM's meeting with Belcher (690).

On 1/4/68, at 10:45 AM, Karney called FM's office and left word for FM to call (691); FM called at 11:30 AM and arranged for a 2 PM appointment with Karney at Karney's office (691).

On 1/4/68, a meeting took place in Karney's office in the New York GM Building from 3:20-5:00 PM between FM, Karney and Fogg, Fleet Representative of the Chevrolet Motor Division (691, 698-705, 715-725). (Actually, one other person was present for GM, but his presence and identity are not disclosed in the GM documents.) Fogg was present because of FM's allegation that Chevrolet Motor Division had interfered with Nabcor's Brokers in purchasing Chevrolet cars. FM said not only was the Buffalo Zone involved, but other Zones were involved as well, but that it would be unnecessary to pursue Nabcor's allegations if Nabcor got a fleet certificate. Nabcor supplied information for GM's Request for Fleet user Certificate. Karney said Nabcor's fleet user certificate application would be handled the same as other companies. FM demanded an early decision, by 1/10/68, because Nabcor's brokers were pressing for legal action. Karney asked if FM had been in communication with DiSimone. FM said no. (Note: AM had met with Speece and DiSimone in Jenkintown on 12/13/67.) FM said that Midtown Chevrolet-Pontiac had refused to sell Nabcor cars ordered from Don Allen Chevrolet after Midtown took over Don Allen. Karney did not comment on the allegation, but advised Olson in writing that ultimately, after receiving advice from attorney Joseph G. Wackerman, of the GM Legal Staff in New York, on or before January, 1967, Midtown agreed to sell to Nabcor the ordered cars, but Nabcor then requested cancellation of 8 of the orders (691, 698-705, 715-25).

On 1/4-5/68, Karney prepared in his own handwriting and signed a Request for Fleet User Certificate for Nabcor, saying in part "There are no company owned vehicles as they are all registered in individual names." Also, "Brokers will also sell new vehicles" (706-9, 710-12, 732-5, 746-48). The Fleet Certificate application was typed up, then signed by Karney. A letter of transmittal to Olson was prepared in draft, typed up, then sent to Olson, with a request for an early reply. The letter stated that all vehicles are registered in the names of the individual customers (710-12, 733-5).

On 1/4-5/68, at the same time, Karney prepared a draft of a letter to Olson concerning his meeting with FM, and prepared a chronology of FM contacts from 12/15/67 to 1/4/68 (692-705).

On 1/5/68, this Karney draft was reduced to writing and on 1/5/68 sent to Olson (691, 715-18, 721-25). Apparently accompanying the letter to Olson was a copy of the letter from Executive Director Peter A. Gordon of the Greater New York, Long Island and Westchester Automobile Dealers Association (the "NY ADA") dated 10/21/66, which said in part:

> "Dealers in our area are being solicited by an outfit NABCOR, INC., 101 Benson Manor, Jenkintown, Pennsylvania. They now have a New York office at the Westchester Town House in Westchester.
>
> "The approach is to issue a franchise as a Nabcor agent and they promise to deliver to the agent any car, make or model, as ordered by the agent, at a price of $50.00 over dealer cost.
>
> "A payment of $5,000 is paid to Nabcor when the agreement is signed and the agent is reimbursed at the rate of $25.00 for each car purchased. Ostensibly, the $5,000 is repaid when the agent sells 200 cars.

"In checking around I have learned they concentrate on Used Car dealers and for them it should be a good deal if they get the new cars.

"I visited their offices and talked to a Mr. Quin (sic). He told me they have fleet contracts for their leasing company, with all of the manufacturers. He stated that since the decision against G.M. in the California case they can do anything they want with these cars.

"They will deliver the car to the agent with an MV50.

"It all seems pretty legal but it would be a hell of a note if all of the larger Used Car dealers were to suddenly become new car agents.

"It had been my understanding that all fleet agreements contained a clause stating the car could not be sold within six months (emphasis supplied.) Quin told me this is not so, now.

"I bring this to your attention because this is a threat to our business.

"Incidently, each agent or dealer, as Nabcor calls them, is supplied with complete retail and cost price lists on all cars and accessories.

"All of their advertising stresses the court rulings against G.M. They also stress the fact the manufacturers are beginning to set-up diagnostic centers all over the country and eventually will handle all warranty service business.

"To quote from their folder:

"NABCORS ANSWERS!

"'The Nabcor System has been formed to provide the small investor with the opportunity to enter the largest market in the world with no investment. The Nabcor System permits the opportunity to build individual businesses on a basis that eliminates all the undesirable Franchise features.

"The Franchised Nabcor Dealer has at his disposal every make and model new car manufactured in the United States today. There are no restrictions on quantity of units or variations in body style, equipment, etc. The Franchised Nabcor Dealer is a part of a Nationa organization with all the benefits accrued through the power of mass purchasing.

"The Franchised Nabcor dealer is provided with complete comprehensiv training in the Nabcor System of Automobile Sales and Leasing.'"

On or before 1/5/68, Olson had a telephone conversation with DiSimone concerning Nabcor (726-7).

On 1/5/68, Ken Womack, Buffalo Zone Manager for Chevrolet, advised DiSimone by telephone that Womack had given his District Managers a copy of the BADA bulletin about Nabcor dated 9/29/67 allegedly for them to become familiar with Nabcor if dealers should ask about Nabcor. Womack said he was of the opinion that his District Managers had not misapplied the informat and claimed that he will discuss the subject with them again (726-7).

On 1/5/68, DiSimone wrote to Olson advising him of the 12/21/67 and 1/5/68 telephone conversations with Womack.

Prior to 1/11/68, Olson had a discussion with O'Connor of Chevrolet Division about the case of Nabcor (720-25).

Prior to 1/5/68, Olson sent O'Connor a copy of information about Nabcor (719).

On 1/5/68, O'Connor returned to Olson the Nabcor information for Olson's file (719).

On 1/9/68, Karney called FM's Philadelphia office and left a message to call (730).

On 1/9/68, at 11:45 AM, FM called Karney's office and Miss Yost told FM to call around 2:30 or 3:00 PM ~~(reverse side of doc. 730 not copied and produced by GM).~~

On 1/9/68, FM called again, at 3:30 PM, and Karney advised that he had not tried to contact FM and that Karney had no information from Detroit, but Karney would visit with Detroit (731).

On or about 1/9/68, at 4:00 PM, Karney talked with Berg who advised that the Nabcor request for a fleet certificate was under advisement (731).

On 1/10/68, FM called Karney long distance wanting the decision on the fleet user certificate. Karney advised that the request was under customary advisement, that no decision was made, and no indication when it would be made. Karney advised FM that Karney would be in Detroit 1/16, 17

18 and FM could call on 1/19 for any information. FM was upset because Karney could not give any information and said he could not stall his brokers much longer. FM said he must reply to the broker's letter and needed GM's answer Yes or No (728-9).

On 1/11/68, Olson sent O'Connor further material (Karney report on FM meeting and the Karney Chronology) regarding the case of Nabcor, with Olson advising O'Connor that it was most important that the Nabcor matter be handled quickly, especially to advise Chevrolet field management and personnel about GM policy. Also, Olson attached a copy of the NY ADA bulletin on Nabcor dated 10/21/66 (720-5).

On 1/17/68, Olson sent a letter to Frink attaching Karney letter of 1/5/68 and Nabcor Request for Fleet User Certificate forwarded by Karney, with statement by Olson that because Nabcor states there are no company owned vehicles, Olson does not see how we could authorize a Fleet Agreement (Note: Even the Director of the Fleet Section thinks of a fleet certificate as the old "fleet agreement", which made the holder agree not to resell any cars purchased under the agreement for a 6-month period, thereby making the cars used cars and preventing non-franchised dealers from competing with the GM dealers.) Olson said it was similar to Lily Tulip Co.'s request for a fleet certificate turned down during the first week of 1968 because the cars purchased by Lily Tulip are registered in the names of the company employees who drive them (732-5).

On 1/19/68, FM met with Karney in Karney's office in Room 426 of the New York GM Building. FM wanted to know if the request had been approved and Karney said the request was still under advisement by Central Office. FM said he wanted an answer by 1/23/68. Karney said he would call Detroit and ask for a reply within the specified time. Karney said the requested D&B report on Nabcor and other parts of the normal investigation by GM would take time. Karney said FM should debate the fleet certificate requirements with the GM Legal Staff (735-6).

On 1/19/68, Karney called Frink immediately to make him aware of FM's request (735-6, 738-9).

On 1/23/68, Karney wrote a letter to Olson attaching a copy of his memorandum covering Karney's meeting with FM on 1/19/68 (737-9).

On 1/26/68, Olson prepared (1) a letter to Karney rejecting Nabcor's request for a fleet user certificate because Nabcor did not have the cars registered in its name; also, the letter stated that GM was not in a position to investigate the circumstances of FM's allegations about Buffalo and that there was no basis to support the conduct alleged; and (2) a letter to FM under Karney's name to the same effect (741-44).

On 1/26/68, Olson sent a letter to Karney enclosing the reply letter to FM's request for a "Fleet Agreement" (another freudian slip) with blind carbon copies to Sattler and Crowley (GM Legal Staff). Olson requested that Karney call Olson immediately in Las Vegas upon receipt of the letter (740-44).

On 1/31/68, Miss Yost retyped the letter to FM (prepared by Olson) and changed the date to 1/31/68. The letter was then mailed to FM with a blind carbon copy to Olson (745).

On 2/7/68, FM wrote a letter to Karney, with carbon copies to the GM President and Chairman of the Board. FM stated that Nabcor's request for a fleet certificate resulted from his meeting with Belcher, that Belcher had agreed with FM that obtaining a fleet certificate might correct a situatio created by the GM employees in the Buffalo area. The original purpose of the Belcher meeting was to correct the actions of the GM dealers. These dealers were engaged in a concerted effort to prohibit sales to Nabcor distributors in the area, initiated by GM employees. If you can't proceed any further on the information you now have, we will have to seek other avenues, said FM (751, 753, 756-7).

On 2/9/68, Karney sent a copy of FM's letter to Olson (752-3).

On 2/9/68, GM President Cole received a copy of the FM letter (756)

On 2/9/68, the Office of the GM President wrote to Olson to claim that President Cole has not seen the FM letter (755-7).

Sometime between 2/8-14/68, Berg and Karney have a telephone conversation regarding FM's letter (and a matter which GM claims to be privileged -754); also, Berg wants Karney to advise him as to any further communications with FM. Copies of the Berg letter were sent to Sattler, Olson and Crowley (GM Legal Staff) (754).

P. GMAC/GM-MATT SLAP CHEVROLET FINANCING INCIDENT.

As a result of the FM-Belcher communications (especially the meeting of 12/15/67), FM applied to GMAC for financing to purchase 25 Chevrole (through Matt Slap Chevrolet) for the purpose of engaging in the daily rental business in a minimum way to meet the GM requirement of a minimum number of cars which GM required to be registered in a company's name or purchased annually by the company, to entitle the "fleet user" to a GM fleet user certificate (see testimony under MATT SLAP CHEVROLET above). Naboor was refused the financing by GMAC. The GM/GMAC documents themselves show the following:

On or prior to 1/31/68, Robert G. Sloane, General Manager of Matt Slap Chevrolet, spoke with Hank Thomas of Philadelphia GMAC about Naboor's intended purchase of 25 Chevrolets. GM's Motor Insurance Corp. was to be the insurance carrier; and GMAC was to finance the purchase; repayment was to be by 11 monthly payments with a balloon note at the end of the 12th month, interest at 4-1/2% flat (783-4).

On 1/31/68, Sloane wrote to Thomas requesting the financing for Naboor (783-4).

On 2/14/68, FM prepared and signed a Guarantor Financial Statement and forwarded it to Matt Slapp (770-2 sides, 781-2).

On 2/23/68, somebody ordered a character report on FM and his wife from Wirsing Reports (based on the FM Guarantor Financial Statement) and a real estate search from Bryant "Safety Search" Bureau, Inc. (778-2).

On 2/23/68, the two-above described reports on FM were prepared and subsequently forwarded to the person who ordered them (778-80).

On 2/26/68, Matt Slap Chevrolet made a formal written request on GMAC Form 5044 to GMAC and the Chevrolet Division of GM for approval of Naboor's intended purchase of 25 Chevrolets for daily rental use, with a total retail price of $67,280. Special permission was needed from GM/GMAC because the requested rate of 7.25% true was not in compliance with the limitations of the GM Passenger Car Fleet Financing Plan (777-2 sides). The Philadelphia branch of GMAC recommended that the proposal be accepted because of the additional sales potential represented by Nabcor (777 side 2).

On 3/4/68, an official of GM's Detroit TEF had a conversation with GMAC's Loving and advised Loving that Nabcor needs current audited financial statements and competitive justification for the financing rate requested by GMAC (824). Also, he asked Loving if GMAC had verified whether the vehicles sold to Nabcor previously qualified under the GM Fleet Plan by registering and leasing 20 or more vehicles and if so what type of lease and he wants copies of the Nabcor leases (824, 346).

On 3/4/68, Blesse of GM's Detroit TEF wrote to Musselman of the Philadelphia GMAC stating that GM is withholding a decision on form 5044 dated 2/26/68 concerning 25 cars to be sold to Nabcor pending receipt of:

(a) current audited financing information on Nabcor;

(b) why preferred customer rate of 7.25% true for Nabcor;

(c) the number of cars in Nabcor's current fleet as Nabcor does not appear to qualify to make the purchase under the GM Fleet Plan;

(d) Also, he wants to know if the lease or rental documents have been reviewed by the Philadelphia branch of GMAC. After receipt of the above information, GM will give Nabcor's prop further consideration (346, 765, 776).

On 3/9/68, the Philadelphia GMAC advised Bob Sloane of Matt Slap Chevrolet regarding the contents of the Blesse letter of 3/8/68 (776).

Between 3/9/68 and 3/11/68, Matt Slap requested the additional information from Nabcor to give to GMAC. Nabcor gave some of the information verbally and agreed to increase the rate to 4.50 flat. Nabcor said that the Nabcor rental documents would not be ready until the fleet is purchased (764).

On 3/2/68, Hank Thomas of Philadelphia GMAC wrote on behalf of Musselman to Blesse of GM's Detroit TEF advising that GMAC has spoken with Matt Slap Chevrolet, which provided the following information about Nabcor:

(a) current audited financial statements are not available, but FM offers his personal guaranty. Attached copy of GM Guarantor Financial Statement (770-2 sides) together with property search (767-8) of the FM realty listed in the FM Guarantor Financial Statement; also, copy of a character credit report on FM (769);

(b) Advised that FM now willing to pay 4.50%;

(c) Nabcor has 1,100 units on lease;

(d) Nabcor won't have rental documents until the 25-car fleet is purchased.

On 3/19/68, Blesse of GM Detroit TEF wrote Musselman of the Philadelphia Branch of GMAC insisting upon audited financial statements for Nabcor in spite of the FM guaranty. (Note: Also, Matt Slap was to be a guarantor of the transaction to GM/GMAC.) Blesse wants to know if GMAC has verified that Nabcor has 1,100 cars on lease. It would be unusual if this were so and Nabcor did not have rental documents available for GM's review, said Blesse (763, 774).

On 3/25/68, Philadelphia GMAC spoke with Sloane of Matt Slap Chevrolet who said that he is trying to obtain bank financing for Nabcor's purchase of 25 Chevrolets (774-6).

Q. GM'S INITIAL RESPONSE TO NABCOR'S ACTIVITIES.

Various GM documents show the interest and attitude of GM toward Nabcor beginning several months after Nabcor was formed in 1/66. Nabcor's first orders (as distinguished from purchases of cars from the showroom of the dealer) were for 1967 cars.

On 2/15/66, J. J. Owens (Director of the Fleet Section) telephoned Karney (Regional Director of the Fleet Section in New York City) to have Karney file the following information in the event Nabcor called GM's Fleet Section: Nabcor, Inc. offered new cars to GM fleet certificate holder Zippy Car Rental below dealer cost. Nabcor has the ability to supply units below dealer cost (142, 143-4).

On 3/28/66, Mr. Mennola of Grandway, Inc. (a subsidiary of Grand Union - holder of GM fleet certificate) located in New York City telephoned Karney's office in NYC and advised secretary Yost that Nabcor, Inc. was offering a franchise to become a car broker to sell new and used cars, and would be able to give customer full factory warranty. Mennola said he checked with Circle Buick in New York who said to him emphasically that if he bought a Nabcor franchise Circle Buick would not service under the factory warranty any of the cars. Mr. Mennola said he called to protect his company as well as GM (145-6). Miss Yost, Karney's secretary, tried to extract from Mennola where Nabcor was purchasing its new cars from, but Mennola said he didn't know. Miss Yost then said she would check with Detroit and have someone call him with an answer to his problem (GM produced no documents reflecting what was said to Mennola by Owens.) Miss Yost called Mr. Owens and his secretary, Marguerite, who said Owens would call back, but he did not by 5:20 PM, at which time Mennola called again for an answer (142-4).

On 3/29/66, in the morning Miss Yost called Detroit again and Marguerite said Mr. Owens would call her back. Mr. Mennola called again. Miss Yost called Owens around 3:00 PM and Miss Yost gave him the foregoing information about Nabcor and Mennola. Owens said he would call Mr. Mennola and unless Karney had a memo from Owens Karney could forget the whole thing. Miss Yost then wrote a memo to Karney on 3/29/66 explaining all of the foregoing, "in the event something should occur again regarding" Nabcor (142).

During the morning of 6/7/66, Paul Wetzel in GM's Public Relations Office in New York City received a telephone call from a Lloyd Calley of New York City, who inquired about a Nabcor ad which ran in in the New York Times on 6/6/66, offering franchises to become distributors for the sale and lease of new cars for a $5,000 franchise fee. Colley said that he had met with Nabcor's Dennison who said Nabcor would fill orders for any type (domestic) new car for purchase or lease by customers Calley solicited, and that Nabcor received a special fleet price to which Nabcor added a $50 fee; also Nabcor had special service arrangements with local service departments of franchised dealers (657).

On 6/7/66, the Wetzel letter was sent to and received by Frederic G. Donner, Chairman of the Board of GM (657).

On 6/9/66, the same copy of the Wetzel letter was received by James M. Roche, President of GM (657).

On 6/7/66, R. G. Lanthier, a Pontiac dealer in Newburgh, N.Y., wrote a letter to the Eastern Regional Manager of Pontiac (received by him 6/8/66) informing GM that Nabcor has a dealer in Newburgh, and that Lanthier's fellow members in the Newburgh Automobile Dealers Association "are up in arms" about "these parasites". The "local yokel put his $5000 down and is having a hell of a time getting A OK by the Motor Vehicle Dept." Also, Lanthier enclosed a copy of a D&B Report on Nabcor dated 3/17/66 (with "5/16/66" handwritten at the top), which said in part that Nabcor's plans call for a sales territory to extend from Maine to Florida and East of the Mississippi River. Eventually, Nabcor will be a national organization. Sales through agents will be made to individuals in the territory. Nabcor has made contracts with several dealerships to obtain service. Nabcor maintain offices in Jenkintown and in Westchester County (799-801).

Between 6/7/66 and 6/14/66, Chevrolet was requested to perform an investigation of Nabcor, on account of the Nabcor ad in the New York Times (795, 147). A Chevrolet dealer told GM that a representative of Nabcor can be contacted by calling a given number; also, another Chevrolet dealer gave GM Nabcor's new address and telephone number. Contacts told GM that Nabcor buys Fords for $15 to $20 over dealer invoice and that the cars are easy to buy with many dealers participating. Also, Nabcor had acquired 3 Chevrolets at $90 over dealer invoice. Nabcor operates as a broker in new cars and is reported to be in financial difficulty. Nabcor's main operations appear to be centered in New York City. If O'Connor believes a more extensive investigation of Nabcor would prove helpful, Foley would have a representative of one of the Motor Car Divisions contact Nabcor's Dennison (referred to in the Nabcor ad) without divulging that he is employed by GM, although this could place GM in an investigation area about which President Roche made statements to the Senate Subcommittee (alluding to the Nader incide

(795, 147). E. D. Foley was a high GM official on the corporate staff of GM in Detroit.

On 6/14/66, Foley wrote a memo to O'Connor, a high official in the GM Sales Section, describing the above Chevrolet investigation of Nabcor (147, 795).

Prior to 6/17/66, a GM official communicated with GM General Counsel Aloysius F. Power, Esq., about Nabcor, who created a file on Nabcor, then forwarded the file to Mr. H. E. Crawford, a high GM official (655).

On or before 6/17/66, Crawford requested that a Mr. Emmett P. Feely, a high GM official, submit the results of Chevrolet's investigation of Nabcor (655).

On 6/17/66, Feely wrote a letter to Crawford (received 6/20/66) setting forth the results of Chevrolet's investigation of Nabcor, to the same effect as Foley's memorandum of 6/14/66. Also, Feely stated "It was not possible to obtain any information indicating that this company is endeavoring to franchise others to sell or lease new cars which they purchase." (655).

On or before 6/20/66, Roche or someone on his behalf requested that Roche be given a report on Nabcor (656).

On 6/20/66, Crawford wrote to Feely advising him that they were requested to give Roche a report on Nabcor, and that the information should be as complete as possible (656). (Note: Allegedly privileged information was deleted from the letter.)

On or before 6/22/66, Feely directed that O'Connor of Chevrolet handle Crawford's request (656).

On 6/24/66, O'Connor discussed with Wetzel the contents of his letter of 6/7/66 to Svoboda, who said that Colley was a stranger who wanted to know if GM was aware of any of the arrangements by Nabcor which he described. Wetzel told Calley GM's method of distribution (through dealers only) and Colley did not ask for a letter. Colley did say he called the Better Business Bureau of Metropolitan New York, Inc. about Nabcor (148).

On 6/24/66, O'Connor communicated with the Fleet Section about Nabco which later got back to O'Connor saying that the records of the Fleet Section revealed that no fleet certificate had been issued to Nabcor and there were no communications by the Fleet Section with Nabcor (148).

After 6/8/66, the Eastern Regional Manager of Pontiac transmitted the Lanthier (Newburgh Pontiac dealer) letter dated 6/7/66 and the Nabcor D&B to the home office of Pontiac, in Pontiac, Michigan (798).

On 6/24/66, H. C. Pratt, Director of Marketing and Organization for the Pontiac Motor Division wrote a letter to E. D. Foley of the GM Sales Section in Detroit, Michigan (received 6/27/66) enclosing the Lanthier letter and Nabcor D&B, "as a matter of information only". Also, Pratt enclosed an automobile price book which had been brought to Pontiac's attention (798-801). (Note: The price book was not produced by GM.)

On 6/29/66, O'Connor wrote another memorandum to files. The GM Sales Section was able to secure information on Nabcor through the Chevrolet Motor Division. Repeats the information in the 6/24/66 RWO memo (148) and

6/14/66 EDF memorandum (147, 795). (796-7).

On or before 7/1/66, Crawford suggested to O'Connor that he forward to President Roche information he had about Nabcor which resulted from the Wetzel letter (654).

On 7/1/66, O'Connor wrote to President Roche (received by President Roche 7/1/66) and attached information about Nabcor, explaining that the GM inquiry was prompted by the Wetzel letter. Apparently annexed to the O'Connor letter was the Feely letter to Crawford of 6/17/66 (655), the Crawford letter to Feely dated 6/20/66 and note to O'Connor received 6/22/66 (656) and the Wetzel letter to Svoboda dated 6/7/66 (657), previously received by Donner (6/7/66) and Roche (6/9/66) (657).

On 8/18/66, the final judgment was entered against GM in the California Discount Case, which enjoined GM perpetually and nationwide from interfering with discount houses, referral plans and others who were engaged in the sale of new Chevrolets without a factory franchise. (Note: GM has refused totally to provide plaintiffs' counsel with any information about this judgment or GM's activities in enforcing compliance with the judgment.)

On 9/22/66, attorney Newman of Messrs. Epstein, Newman and Lubitz in New York City wrote to GM in Detroit advising that a client had been approached by Nabcor to become a Nabcor distributor, and wanted to know whether Nabcor can deliver GM cars at discount prices (223). The letter was referred to Mr. P. J. Crowley of the GM Legal Staff on 9/26/66 (223).

On 9/26/66, Mr. Crowley (on behalf of Aloysius F. Power, GM's General Counsel) wrote to Mr. Newman advising that GM sells its cars only to authorized GM dealers and that GM has no knowledge concerning Nabcor. A blind carbon copy was sent to O'Connor (224).

On or before 12/14/66, an Oldsmobile Regional Manager advised Chuck Church of the Oldsmobile Division in Lansing, Michigan that Nabcor is actively soliciting used car companies to buy the Nabcor franchise for $5,000, which allows them to sell any kind of new cars in their area. Nabcor will furnish these new cars to their dealers for $50 over dealer cost. Nabcor's brochure states they hold Fleet User Certificates for all car manufacturers and are able to supply these cars because of this. Nabcor also mentions that since the GM California decision by the Supreme Court, Nabcor can do this without any legal entanglement. When a dealer sells to Nabcor, they are asking for the $50 fleet rebate. Nabcor is buying the cars for dealer cost as a result. Our GM Oldsmobile dealers are quite upset about this (155).

On 12/14/66, telephoned Karney's office in New York with the above information. At that time Nabcor's new office in the GM Building was discussed and the fact that Don Allen Chevrolet's former Fleet Manager (Bud Morrison) was now the Manager of Nabcor. Church said that no investigation had been done on Nabcor. Church was told that Nelson Karney will advise him on the matter of Nabcor. (155).

On 12/15/66, Berg of the Fleet Section called Karney and asked Karney to return his call (150).

On 12/21/66, Walter Gray, Pontiac Zone official in New York, telephoned Karney to inform Karney that "Our friend who will have an office on the fifth floor will be known as United States Sales & Information Service

It is a subsidiary of the other outfit because they're the ones supplying the money." Miss Yost, Karney's secretary, took the message from Gray (151-2).

On Thursday, 12/29/66, Bud Morrison, Manager of Nabcor, left a message for Karney advising him that Morrison "will be in Suite 508 (the Nabcor Office in the GM Building) on Tuesday. Was working out of his Yonkers office." This message was taken by Miss Yost (153). (At this time, Midtown is refusing to deliver cars to Nabcor ordered through Don Allen Chevrolet.) One car, # I-148, was shipped from Tarrytown, N.Y. on Tuesday, 12/27/66 (663) and received 0-2 days thereafter, presumably (658-663, 758-62).

On or before 1/3/67, Midtown (Chevrolet-Pontiac Division of GM communicated with attorney Joseph G. Wackerman of the GM Legal Staff in NY as to Nabcor's outstanding 10 orders made through predecessor Don Allen Chevrolet; Mr. Wackerman advised Midtown to honor Nabcor's ten orders; this information about the legal advice given to Midtown Chevrolet was communicated to Karney (701).

On Tuesday, 1/3/67, Englert of Midtown Chevrolet advised Morrison he would sell the ordered cars at $75 over tissue; Morrison said cancel, too high (758-62);

On Wednesday, 1/4/66, FM called and said he expected GM would honor the original $25 price in the Don Allen letter of 11/2/66 (335).

On Thursday, 1/5/66, Englert agreed to abide by the price in the Don Allen letter, but not as to the Corvette (758-62).

On Thursday, 1/11/66 and after, Nabcor cancelled all of the orders except L-148 and L-184 (758-62). Nabcor had placed the cancelled orders with other dealers in the meantime, to the extent not already cancelled because of the delay (FM and Nash foundation testimony).

On 1/6/67, Karney wrote to Berg stating he had attempted to contact Bud Morrison numerous times in Room 508, but unsuccessfully because the office is not finished; the name Nabcor appears on the door but the name United States Sales and Information Service will probably be used in the New York area; Karney researched all issues of the New York Times for the past 30 days and could not find a single Nabcor ad; if additional research is needed, please advise; Karney will continue his efforts to contact Morrison and will advise Berg if additional information about Nabcor is obtained as a result (149).

On 1/24/67, Karney wrote to Berg advising that Morrison is no longer employed by Nabcor, for unknown reasons; Room 508 office has been closed and all furnishings removed; Nabcor has a small office in Yonkers, presently managed by Ed O'Brien; no attempts made to contact this office; please advise if Karney should consider the Nabcor file closed or if Berg feels a contact with O'Brien would be beneficial (154).

Subsequent to 1/25/67, Nabcor's unaudited financial statements for the period ending 12/31/66 wound up in the files of GM and/or GMAC (225-7).

On 8/25/67, Paul Martin of Martin Chevrolet, Warren, Ohio, wrote to his Zone Manager, Jack Abbe, Chevrolet Motor Division, in Cleveland, Ohio to transmit information about Nabcor which he said was furnished to him by the

Bureau of Motor Vehicles of Ohio. Martin said GM could use the material in any way except by publication of it, and that if GM is interested further, contact Fred Rice, Registrar of Motor Vehicles, Columbus, Ohio. Enclosed was a copy of a Nabcor franchise ad from the Sunday, 8/13/67 edition of the Youngstown Vindicator (every make and model for sale or lease) and a 4-page typewritten report on the Nabcor ad appearing in various Ohio papers. The report was undated and unsigned, typewritten on blank pieces of paper. "The entire program was based upon the fact that the broker could undersell the local new car dealer. Nabcor is ... licensed as a bonafide motor vehicle dealer.... They ... purchase all their vehicles from large new car dealers. ... This being a fleet purchase, the dealer automatically receives a 2% rebate on the 200 units with no investment of any kind and no responsibility other than entering the orders. ... They have it drop-shipped to a new car dealer in the local area of the broker and it is delivered to the purchaser from that point. ...Nabcor contacts the local dealers and contracts with one dealer for each make of car to handle the 'make-ready' and warranty servicing of the car. ... This 'make-ready' fee is the only additional cost added to the tissue. They claim that local dealers are quite happy ... as it means just that many extra dollars in the local dealers service department income without any headaches for the local dealer. ...The broker may purchase the car at invoice plus make-ready and lease his own cars. The broker is required to have an office,...but may be in his home if properly set up. ... His main selling story is that he can furnish them a new car at a price below that of the local new car dealer. This can be accomplished due to his exceedingly low overhead. ... he will be selling at least $200.00 below the best local dealers price. ... The broker is provided with ... a built-in power of attorney to purchase a definitely described car for a specified amount of money...on which the broker transfers his power of attorney from the customer of Nabcor. ... They, as dealers in New York, make the sale directly to the customer and process all papers in the deal.... ...The total cash outlay required of a person to qualify as a broker for Nabcor (if he is an acceptable applicant) is $5,500.00." (791-4).

Before 9/7/67, the Cleveland Chevrolet Zone transmitted the Martin Chevrolet letter, Nabcor ad and 4-page Ohio MV Report on Nabcor to E. P. Moran, Manager, Dealer Organization & Analysis Dept. of the Chevrolet Motor Division, Central Office in Detroit, and to Mr. S. G. Gilliatt, of the GM Sales Section, also in Detroit (788-94).

On 9/11/67, Gilliatt spoke with Foley of the GM Sales Section in Detroit, who advised Gilliatt that GM has a prior file on this matter; also, Gilliatt asked his secretary, Vivian, to see him on this Nabcor matter (788).

On 4/6/72, the President of Soundview Chevrolet in New Rochelle, New York wrote to the Chevrolet Zone Manager in Tarrytown, New York advising that a Nabcor franchisee has opened up in New Rochelle and is advertising new cars. The President has written to the Motor Vehicle Department and will keep GM informed of the situation. This is similar to the company in Yonkers, and dealers with big investments are quite concerned (821).

On 4/11/72, the Zone Manager (N. K. Akers) wrote to Soundview Chevrolet saying that GM can do without this type of situation, and that Soundview should let GM know what develops. Akers doesn't know what can be done about Nabcor at a zone or factory level, but he would be interested in looking into the situation. The only way a program such as Nabcor's can survive is obvious, and he doesn't have to tell Soundview what it is — but it is dealer oriented (820, 821, 811a-819).

R. Tax Rebate Incidents - "2nd Purchaser" Refund Delays.

Documents produced by GM show that persons who bought cars from Nabcor or through its brokers were unable to obtain a refund of the federal excise tax (not levied on car purchases by non-profit schools) until more than one year after purchase of the cars. The problem was caused by the GM claim that the purchasers were "2nd owners" because they bought the cars from non-franchised dealers, who were the "1st owner" and not qualified as such to receive the benefit of the tax exemption for non-profit schools. If the Nabcor customers had purchased their cars from GM dealers directly, they would not have had to pay the tax upon the purchase of the car. The requirement that Nabcor (and, therefore, the Nabcor customer) advance the federal excise tax money and have the Nabcor customer apply for a refund, together with the waiting of intolerable periods of time for payment of the refund, is a further barrier created by GM to hamper companies such as Nabcor. See the following GM documents:

Rev. James L. Meehan - On or about 2/22/69, Rev. Meehan bought a 1969 Pontiac Station Wagon through plaintiff Alfred J. Young, Sr., who acquired the car from plaintiff General, which bought the car from GM Pontiac dealer Brown Motor Sales in Buffalo on or about the same date. Also, Rev. Meehan on or about 5/11/71 bought a 1971 Catalina Pontiac Station Wagon through plaintiff Alfred J. Young, Sr., who obtained it from Nabcor, which acquired it from Kline Pontiac in Doylestown, Pennsylvania (N-769, purchaser: St. Cyril Church), delivered 5/13/71. The minimum delay on the refund for the 1st Pontiac 19 months; and the minimum delay for the refund on the 2nd Pontiac was 9 months (100-1, 105-6, 109, 111-7, 133-6).

Rev. Eugene A. Kelly - 1969 Pontiac Station wagon through plaintiff Alfred J. Young, Sr. on 2/22/69. Young acquired the Pontiac from plaintiff

General, which bought the Pontiac from GM Pontiac dealer Brown Motor Sales, in Buffalo; Rev. Kelly obtained a $212.53 refund on 9/3/70, approximately 19 months after his purchase (102-6, 111, 114-6, 119-30, 122-27, 129-32). See foundation testimony of Rev. Eugene A. Kelly (pp. 50-53 above) and ¶ 42 of FM's foundation testimony.

On 2/23/72, Zone Manager W. H. Gordon, Jr. of the Philadelphia Cadillac Zone (who testified at the 4/10/73 hearing) received a letter dated 2/23/72 from the Cadillac Divisional Comptroller in Detroit, who said that federal excise tax refund applications by Nabcor customers Burney and Applegate were rejected by GM because "the customer applying for the refund is not the individual specified as the owner of the vehicle per our latest delivery report card". "If the dealer's delivery information is correct, please return the application to us and we will advise the vehicle owner the applicati must be completed by the individual or firm who took delivery of the vehicle." (347-50). The effect is that Nabcor would have to apply and because Nabcor is not itself entitled to a refund, as the ultimate user for non-profit educational purposes, the refund would not be granted. GM has failed to permit customers of Nabcor to obtain refunds to which they are entitled, because of GM's concept that Nabcor is the first purchaser of the car (i.e., the first retail user of the car), a totally false and illegal conclusion, but sufficient to deny and delay excise tax refunds to Nabcor customers and to prevent them from obtaining warranty work to which they are entitled under the GM warranties. Gordon gave the matter for handling to Hugh DuPuis (who also testified at the hearing). (347). The selling dealer was Daniels Cadillac.

S. Stealing of Nabcor's Records by Bergelson Group and Attempt to Terminate this Action and Nabcor's Business.

FM will testify that Nabcor's records were stolen under gunpoint during early 1972 by the Bergelson Group, who were subsequently arrested pursuant to FM's complaint. See foundation testimony of (i) FM, ¶ 49; (ii) Victor Bergelson. The involvment of GM and GMAC is evidenced by Berg's foundation testimony that he met with Bergelson at least three times in Jenkintown immediately prior to the gun-point incident and discussed this action with Bergelson; also, Berg intervened with GMAC to give the Bergelson Group the financial relief it sought; the GM/GMAC documents show that Bergelson advised GMAC orally and in writing, prior to Berg's approval of the credit request, that Bergelson would terminate this action as well as Nabcor's business of reselling new cars if GM/GMAC gave Bergelson the requested financial relief. This Berg approval came after Bergelson believed he had ousted FM and AM from office, which attempt was known to Berg (231-311, 787, 804-5). This foundation evidence will be offered to show the extent to which Nabcor's business operations were to be suppressed by GM, GMAC, Donner and Roche, and by illegal means; and to show that GM believes it has substantial liability as to the damages and/or injunctive relief sought by plaintiffs. Also to be introduced into evidence are the GM documents relating to the Charge-a-Car transaction with Carz, Inc., Nabcor's dealings with GMAC and Celina, and the Bergelson activities: 231-311, 787, 804-5.

T. Warranty Problems of Customers of Nabcor & Nabcor Franchisee NABDAB.

1. Buick Motor Division

Nabcor franchisee in Delaware, Nabcor Delaware Auto Brokers, Inc. ("NABDAB"), wrote a letter to Mr. Moberg, Customer Relations Manager of the Philadelphia Buick Zone on 9/17/70 with a copy to GM in Detroit advising him that because, of warranty and other difficulties with the Nabcor System, NABDAB terminated its Nabcor franchise on 8/24/70 and now wants GM to help it in winding up its business. NABDAB said that local Buick dealers in Delaware refused to honor the GM warranty, because the warranties were in Nabcor's name instead of the customer. Thus, according to GM, Nabcor's customer is not entitled to the full benefits of the warranty. NABDAB asked help from GM in transferring the warranties to the name of the car owner (212). (Note: Original copy to Moberg was not produced by GM.)

On 9/21/70, the copy was received by GM in Detroit and on 9/23/70 the copy was received by Buick Division in Detroit (212).

On 9/24/70, the Buick Division in Detroit sent a note to the Philadelphia Buick Zone requesting the Zone to acknowledge the NABDAB correspondence (215).

On 9/29/70, the NABDAB complaint was reduced to a Buick complaint form for data processing (213-4).

On 10/5/70, NABDAB was notified by the Zone that GM suggests that each owner apply for a transfer of warranty at a local authorized Buick deale at a cost to them of $25 per transfer. Buick suggested that NABDAB communicate with Nabcor and suggest that they have the dealer that originally delivered the cars make out the warranty in the name of the original purchas NABDAB will have to handle this with Nabcor alone (216).

On 10/5/70, the complaint of NABDAB was marked closed and the form was marked to indicate that the owner was satisfied; the form was signed by the Buick Zone Service Manager Moberg and either the Zone Manager or his assistant (213-4).

On 10/6/70, the Buick Philadelphia Zone advised the Buick Division in Detroit that the GM dealers who sold the cars to Nabcor should be charged with the complaint, except that the Philadelphia Buick Zone did not know who the GM dealers were who sold the Buicks to Nabcor (217). This is an example of how a GM dealer is penalized by GM for selling cars to Nabcor.

On 10/8/70, a copy of the Buick Zone report on the disposition of the NABDAB complaint was sent to the Buick Division in Detroit (213).

2. Pontiac Motor Division

On 9/17/70, NABDAB sent a virtually identical letter to James Kurzen, Customer Relations Manager for the Philadelphia Pontiac Zone, with a copy to GM in Detroit (218).

On 10/20/70, Kurzen wrote to NABDAB saying he would be in touch with NABDAB as soon as information becomes available, with a blind copy to J. P. Ware, Manager of the Philadelphia Pontiac Zone and to W. E. Hames, Ass't General Service Manager of the Pontiac Motor Division, in Pontiac, Michigan (219).

On 10/20/70, Kurzen wrote to Hames about his communications with NABDAB because of the legal implications, and asked for directions. Kurzen explained that Greytak of NABDAB was a former top car salesman at Rockhill Pontiac in Delaware who took a Nabcor franchise to sell new cars to retail customers at a "BIG" discount. Nabcor purchased the cars from Kline Pontiac in Doylestown, Pa. Kurzen doesn't know if Kline claimed any fleet allowance, but Nabcor is not a fleet account. The Pontiac dealers in Delaware serviced the cars until Nabcor insisted on some services. Nabcor was asked by the dealers to have a warranted owner listed on the plate if further warranty work was to be performed by the dealer. A $25 fee would be required under GM rules, although this is not stated. Kurzen enclosed copies of his NABDAB correspondence (220).

On 10/30/70, Hames wrote to Kurzen saying: The cars were delivered by GM dealer Kline Pontiac to Nabcor "which is not a recognized fleet account". The warranty plates were properly issued to Nabcor. The customer must pay for the transfer because Nabcor is not the seller of a car taken out of daily rental, a driving training vehicle or a GM company car. The present owners should apply to a Pontiac dealership for a new plate (221). The effect of this is that Nabcor's right to deliver a full warranty to its customer (the first retail customer) is denied by GM because Nabcor is not a "qualified fleet" company. Also, Nabcor or its customers are required to pay an additional $25 for the reduced warranty GM will permit Nabcor's customer to obtain through Nabcor.

On 11/5/70, Kurzen asked Hames if he had any answer to NABDAB, which apparently crossed in the mails with Hames' letter of 10/30/70 (720).

On 11/16/70, Kurzen wrote to NABDAB with blind copies to Ware, Walker, Hames and Rutelin that Nabcor — the name on the warranty plate — is not a recognized fleet account and for that reason the present owners should contact a Pontiac dealership and apply for a new plate. Although there is no charge for the first retail purchaser, Nabcor is not a recognized fleet account and, according to Kurzen, there will be a $25 fee for each transfer of the warranty plate (222).

U. Types of Orders by GM Dealers.

All new cars orders to the factory by a GM dealer are known as "wholesale" orders (Rock 52), even though the dealer orders only 1 car (Rock 51). A wholesale sale is a sale made by GM to one of its dealers (Rock 32). The GM wholesale order form (e.g., 1970 Oldsmobile, produced by Marty Motors, ser. # 15046) has the following types of orders to be designated by the dealer: "Dealer Demo.", "Sold Order", "Fleet Order" and "Fleet Replacement". Other order forms provide a type called "Stock", where the dealer is ordering the car for his inventory and not according to the specifications of a specific customer. "Sold Orders" are non-fleet, according to the specifications of a customer, usually a retail customer. Nobody other than qualified leasing companies, qualified users and holders of fleet certificates are fleet purchasers for any purpose (Rock 113). Fleet sales are sales made by the GM dealer to a fleet user (Rock 32). Fleet orders can be submitted as an order for a single car (Rock 53).

V. "Fleet Sales" are Sales by GM which Bypass GM's Dealers.

GM claims with minor exceptions that all sales of new cars by GM are made through GM's franchisees (including retail divisions of GM), except sales to the U. S. Government (Rock 32). U. S. Government sales are made directly by GM (Rock 32). Every sale of the same type of car to GM dealers is made by GM at the same price (Rock 45). Dealers get no discount for volume purchases from GM (Rock 45).

GM stimulates so-called fleet sales of all types through advertising, and refers the leads to the GM dealers in the area where the decision of the prospective fleet customer is to be made (Rock 89-90). But see foundation testimony of William G. Kemp, who testifies that he received no such referrals of fleet business from GM. GM will testify that the advertising cost per fleet sale exceeds the gross profit received by the GM dealer of $25 or so, although GM has a gross profit of several thousand dollars or less per car (exclusive of fixed costs at least). Fleet sales through GM dealers for a nominal sum of $10-50 on a $7,000 purchase amount to no more than sales made directly by GM, which bypass the GM dealer who delivers the car, as a practical matter, particularly when the dealer's obligations to perform warranty work are taken into consideration.

The National Automobile Dealers Association complained to the Justice Department about GM's attempts to eliminate its dealers through the fleet sales program of GM. See letter from the NADA's attorneys to the Justice Department, dated 5/22/67 (J-111), obtained by plaintiffs for use in this action under the Freedom of Information Act.

GM is torn between its desire to sell cars to volume purchasers of the type GM calls qualified fleet purchasers and its announced policy that all sales by GM are made through its dealers. GM's fleet programs are no more than an attempt to take certain sales (qualified fleet sales) away from its dealers and to leave the remaining types of sales to its dealers, essentially retail sales. GM's whole fleet program is no more than an illegal division or allocation of markets between GM and its franchisees, with GM making volume sales on a wholesale (or lower than wholesale) basis to qualified fleet purchasers, by running the sales often generated by GM through dealers by convincing them, falsely, that "fleet is plus business" or by the dealer recognizing that if he doesn't accept fleet business that other dealers will, which is the same reason many GM dealers were always willing to deal with Nabcor, until the factory stopped them. The retail sales were left to the GM dealers, which is the type of sale that Nabcor was making and, together with

GM's allocation of fleet business to itself (as explained above), Nabcor became a serious competitive threat to the dealers, who forced GM to take action against Nabcor and GM dealers who cooperated with Nabcor. The only way Nabcor could be stopped from buying at wholesale prices was by an illegal delivery system mined with obstacles such as fleet certificates, warranty restrictions, charges for transfers of warranty, threats to dealers, mandatory destination charges, phantom freight, fleet allotments, evaluation of dealer performance and the other structural matters to be covered briefly below. But this illegal delivery system did not finish Nabcor off quickly enough, and GM officials had to resort to overt acts directed against Nabcor itself (the "smoking pistol") to finish the job of driving Nabcor and its franchisees out of the business of reselling new cars of any make and model at discount prices, in spite of the 8/18/66 injunction prohibiting GM from doing just that.

W. Warranty Work Costs, in Part, Come out of Dealer's Gross Profit on His Sale.

FM, AM and Kemp will testify that GM dealers are paid an insufficient amount for warranty work and as a result often do not want to service cars sold by Nabcor or even other franchised dealers. Part of the actual cost of the warranty work performed by a dealer is included in the gross profits received by the dealer on the original sale of the new car. This is so because the dealer does perform warranty work on cars sold by him, but does so at a loss. GM, as a result, is concerned about the fleet price at which its dealers sell cars on a fleet basis. If the price is too low, the dealer will actually lose all of his gross profits when he is called upon to perform warranty work for the cars (Rock 99-100). This shows how GM has an interest in the price at which dealers resell their cars. Also, GM has an interest in seeing that dealers do not resell cars to fleet customers at too high a price, thereby losing sales for GM. Accordingly, GM's monopolistic influence is found in fleet sales made, technically, by GM's dealers, but sales in which GM has the only substantial interest.

GM has testified that a fleet purchaser is able to obtain warranty work on his car at any franchisee under GM policy (Rock 116). Yet, GM's warranties since the 1967 model year have restrictions which prohibit retail purchasers (including Nabcor's customers) from obtaining warranty work at any dealer of the customer's choice, instead, the customer is expected to go back to the selling dealer, which in the case of Nabcor purchasers could be 1,000 or so miles away. See GM warranties in §§ AA below. This is a restraint which creates an illegal territorial exclusive. The warranty is the manufacturers' warranty, not the selling dealer's, and the customer should be able to go to any dealer to obtain warranty work, particularly when the customer is not sure how much of the work he'll have to pay for himself. This forces the customer to purchase even the non-warranty work from the selling GM dealer.

Y. History of GM Restraints upon Resales.

GM, Roche and others were perpetually enjoined in the California Discount case, on 8/18/66, a year after the Supreme Court's decision in the same case, United States v. General Motors Corp. GM was enjoined from interfering on a national basis with efforts by franchised dealers to sell Chevrolets through discount houses, referral plans or others, including resellers such as Nabcor and its franchisees. See copy of the injunction, which was entered in the United States District Court for the Central District of California. GM refuses to disclose who in GM was responsible for compliance with the injunction, but every indication seems to be the Fleet Section, which is therefore responsible for the numerous violations of the injunction, as well the GM attorneys and others on whom the Fleet Section and others relied.

The old GM "fleet agreement" used by GM until 1947 (Rock 71-2) made the fleet purchaser agree with GM not to resell the cars it purchased on a fleet basis from GM dealers for a period of 6 months. The fleet agreement was an obvious illegal restraint of trade, and it was discontinued. However, the fleet agreement surfaced again, in the form of the "fleet certificate" and the requirements to obtain such certificate, including that the purchaser not resell the cars. The GM fleet plans require that the fleet purchaser, when a leasing company, hold on to the purchased cars for the 6-month period, to be eligible for the fleet plan benefits, and this same restriction is imposed by GM when persons attempt to obtain a fleet certificate, and by the denial of a fleet certificate to persons who are not qualified fleet purchasers. To be a qualified leasing company, the leasing company must hold on to the cars for 6 months. In essence, the fleet certificate coupled with GM's fleet programs is no more than the re-appearance of the old fleet agreement under a different name, but with the same, illegal limitations. The fleet certificate and fleet plans of GM are determined by the Fleet Section, and the requirements are the same. More importantly, the GM dealers believe in many instances that they are not permitted to sell to persons on a wholesale basis if they do not have a fleet certificate and GM does not represent to the contrary. In fact, GM has gone out of its way numerous times to advise the dealers, under actual or implied threat to cancel their franchise, not to deal with Nabcor or its franchisees.

GM has never advised its GM dealers that they do not have to ensure that a customer has a fleet certificate before they are able to order cars for such customer on a fleet basis (including price and fleet allotment). GM has never advised its dealers that they are free to sell to resellers such as Nabcor and its franchisees on a fleet basis even though the reseller does not have a GM fleet certificate. Nor did GM advise its dealers after learning from FM that GM officials had interfered with sales to Nabcor in violation of the 8/18/66 injunction. But, GM does tell its dealers that a fleet certificate is needed by Nabcor for GM dealers to sell to Nabcor on a fleet basis — fleet price or through the fleet allotment.

Y. Zone Power over GM Dealers.

The GM Zone has the authority to allocate cars on a retail and fleet basis to the GM dealers in the Zone (Rock 36). FM, AM, Strimple, Kemp and Kelleher will testify that GM dealers who fail to abide by the announced or known "wishes" or "desires" of GM can expect to suffer economically because of the power of the GM Zone over the dealer, in a variety of ways, including mis-allocation of cars, delays in obtaining cars, audits of the dealer's warranty work claims, termination of franchise or the threat of termination by such means as sending prospective purchasers to the dealer to buy the dealer's franchise, even though he has expressed no intention of selling it. Also, the power over the dealers is substantial because of GM's program for evaluation of dealer performance, which evaluation is done by the Zone Manager, and takes into account where the dealer has been selling his cars. Cars going outside of the dealer's territory are a bad mark for the dealer.

Z. Competition by Nabcor Would Reduce Car Prices.

FM, AM, Turco and Strimple will testify and various documents will show that Nabcor was competing successfully against GM dealers because of a lower price, which Nabcor's lower overhead allowed. This was a serious threat to the GM dealers who, because of the higher overhead costs mandated by GM, could not meet Nabcor's price. Various dealers complained to GM and to various automobile dealer associations, newspapers, banks, automobile finance companies, motor vehicle bureaus and better business bureaus. The only way for GM to prevent Nabcor from competing with its dealers for retail sales was for GM to tighten up on the illegal territorial exclusive which GM had given its dealers through the structural matters discussed in this Part V. GM tightened up on its warranty restrictions, added a rebate program for "qualified" fleets and thereby acquired a system for monitoring and controlling wholesale sales by its dealers. Also, GM resorted to overt acts directed against Nabcor and its franchisees directly, as distinguished from the territorial exclusive granted to GM's dealers through the structure of GM's distribution system. A discussion of this structural, illegal territorial exclusive given to GM's dealers follows.

AA. The Territorial Exclusive Summarized.

The territorial exclusive enjoyed by GM's franchised dealers starts with the dealer's "area of sales responsibility" and "area of service responsibility" defined at p. 3 of the Pontiac Dealer Selling Agreement (Bates Pontiac, effective 11/1/65 and expiring 10/31/70) as "the area described in Paragraph FIRST of this Agreement", which states: Subject to the terms and conditions hereof, Pontiac will sell and Dealer will buy Pontiac motor vehicles with Dealer having the obligation to develop properly the sale thereof at retail particularly in the following area: UNIFORM METROPOLITAN AREA OF NEW YORK — NORTHERN NEW JERSEY, SECTION 2, IN THE STATE OF NEW YORK: In Bronx County: All of Bronx County, New York, including non-post office areas within or without the area described above served by post office stations located within the area described above." (Also, see the Dealer Selling Agreement between GM and each of the other GM franchisees named as defendants or co-conspirators.) This assigned territory for sales "responsibility" is not illegal itself, but becomes an illegal territorial exclusive, or illegal customer or market allocation, when used in conjunction with the following enforcement practices used by GM and its franchised dealers, as to which GMAC, GM, Donner, Roche, Kemp, Kelleher, FM, AM (and others, as previously indicated) will testify:

1. Fleet Sales Program.

a. Fleet Certificates. Fleet certificates as used by GM to identify to whom GM dealers may sell cars on a wholesale or fleet basis (referring to wholesale or fleet prices and the GM fleet allotment). To be issued a fleet certificate, a company must meet the requirements of a qualified fleet company (user, leasing company or rental company) as defined under GM's annual fleet plans for each Division (see Chevrolet Fleet Plans for 1967-70), including in 1967 the requirement of a minimum number (20) of cars to be purchased annually. Subsequently, the number of cars for eligible fleet companies under GM's fleet plans was reduced to 10, even though the number of cars required for issuance of the GM fleet certificate remained at 20. The difference (in model years 1968-70) is not material. Some companies which qualified for a fleet certificate did not bother to obtain one. For such company, purchases from GM dealers on a fleet basis could be made through GM with little or no trouble because the required 20 annual car purchases show up on the R. L. Polk Registration Lists used by GM to determine eligibility for fleet certificates in most instances. But for Nabcor, which did not register any significant number of cars in its name, the lack of a GM fleet certificate raised questions. GM dealers communicated their intention to effect a fleet sale with Nabcor to the GM Zone, which then told the dealer not to sell to Nabcor on a fleet basis (and sometimes on any basis) because Nabcor did no have or qualify for a GM fleet certificate. Fleet certificates were not issu by GM to resellers such as Nabcor, which meant that dealers were required to communicate with their Zone to effect fleet sales to Nabcor. Not only was a fleet certificate required by GM for a company to buy cars on a wholesale basis, but the fleet certificate itself and Procedure for Handling Requests state that a fleet certificate holder is entitled to buy parts at wholesale prices, but only if the parts are used to repair the fleet and not resold to others.

b. Fleet Allotments. GM would not permit its dealers to sell to Nabcor on a fleet basis through use of the GM fleet allotment. This meant that, during production backlogs, the dealer necessarily had to supply cars to Nabcor out of the dealer's own retail allotment of cars, which was limited during the production backlogs. As a result, the dealer could not sell to Nabcor from an economic standpoint (and often was told not to sell to Nabcor in any event). Sales of the dealer's retail allotment to Nabcor at the very low fleet prices (perhaps 5% of the gross profit of a retail sale) would put the dealer out of business very quickly. Through GM's fleet allotment program, used only as to dealer sales to fleet or wholesale customers on GM's approved list (fleet certificate holder, in GM's National Accounts List or appearing in the R. L. Polk Registrations with 20 or more cars having been registered in the customer's name), GM achieved an illegal market division between GM and each of its franchisees, respectively. GM permitted its dealers to sell to the fleet customers approved by GM and the dealers were free to sell at retail prices in their own territories (through the dealer's retail allotment) to regular retail customers, but not to resellers such as Nabcor, which were selling the cars outside of the dealer's territory. Yet, dealers were permitted to sell through referral plans ("bird-dogs"), as long as the sale was made by the dealer himself, to customers in the dealer's area of sales responsibility.

c. Fleet Plans. During the model years 1967-70, GM had a fleet plan for each Division by which rebates of about $50 per car were paid to GM's franchisees (or, at a franchisee's direction, to the dealer's fleet customer), but only as to dealer sales to fleet customers approved by GM. The GM requirements for this rebate were the same as the requirements for a fleet certificate (except that in 1968 the number of required annual car purchases was reduced to 10, but the required types of use remained the same). Fleet certificates, fleet allotments and fleet plans are no more than the old, illegal fleet agreements, pursuant to which the approved fleet purchasers agreed with GM not to resell, for at least a 6-month period, the cars they bought from GM's dealers. The same 6-month period is contained in the fleet plans, and payment of the rebate to the dealer (or dealer's fleet customer) is conditioned upon the customer not reselling the car for at least 6 months. This same no-resale condition is carried over into GM's requirements for a company to be issued a fleet certificate. When the company does not meet such requirement, such as Nabcor, the fleet certificate application is rejected and GM's dealers either refuse to deal with Nabcor for such reason, or GM has to tell its dealers not to deal with Nabcor, because Nabcor does not have a GM fleet certificate — meaning that Nabcor resells the cars in competition with GM's dealers. The rebate and other fleet plans (such as GMAC financing of a rental line of cars) were denied Nabcor, even though the GM dealer (Matt Slap) wanted Nabcor to have and financing, and Nabcor wanted to go into the business of renting cars (although for the express purpose of obtaining a fleet certificate).

2. Warranty Program. The GM Warranty for 1966 Buicks provided in part: "Buick ... warrants each new motor vehicle ... manufactured or supplied by Buick ... and delivered to the original retail purchaser by an authorized Buick Dealer.... Buick('s) ... obligation under this warranty being limited

to ... parts ... which shall, within ... (24) months after delivery of such vehicle ... to the original retail purchaser or before such vehicle ... has been driven ... (24,000) miles, whichever event shall first occur.... (12466). On the other side of the warranty page it states: "POLICY ON OWNER SERVICE Your selling dealer is responsible for the proper servicing before delivery and has an interest in your continued satisfaction with your new Buick. It is therefore recommended that inspection, warranty and maintenance services be performed by your selling dealer. When touring, or in the event you move, warranty services may be performed by any authorized Buick Dealer in the U.S. or Canada." (12466, at p. 32). The 1967 Chevrolet Warranty states: "Chevrolet ... warrants each new 1967 Model Chevrolet ... manufactured or supplied by Chevrolet and delivered to the original retail purchaser by an authorized Chevrolet Dealer" (12311). In the 1967 Chevrolet owner's booklet, at p. 8, it states: "2. WARRANTY SERVICE — Services under the Chevrolet New Vehicle Warranty may be performed by any authorized Chevrolet Dealer in the United States or Canada, if you are touring or in the event you move. Otherwise, it is recommended that warranty services be performed by the Selling Dealer because of the Selling Dealer's continued and personal interest in you. This ... booklet with the Protect-O-Plate attached must be made available to an authorized Chevrolet Dealer if warranty work becomes necessary. This booklet, and the Vehicle data portion of the Protect-O-Plate attached, should remain with the vehicle at time of resale since owners others than the original purchaser will also need them." (12315, at p. 8). The 1966 Buick owner booklet states that "SUBSEQUENT OWNERS of this vehicle may obtain their personal Owner Identification Protect-O-Plate through any authorized Buick Dealer" (inside back cover, 12466). The inside back cover of the 1967 Chevrolet booklet does not say how subsequent owners may obtain a new plate (12315). The 1968 Chevrolet Warranty states: "For purposes of this Warranty, the term 'Warranted Owner' means the owner of the Vehicle who holds such Vehicle for use and not for resale, who is registered as a Warranted Owner with Chevrolet and possesses a Protect-O-Plate issued by Chevrolet in owner's name for su[illegible] Vehicle. Any authorized Chevrolet Dealer selling a new and unused Vehicle will register the first owner thereof with Chevrolet as first Warranted Owner. The first Warranted Owner shall be entitled to all the benefits of the 24 month/24,000 mile and 5 year/ 50,000 mile provisions of this Warranty without further registration with Chevrolet. Any subsequent Vehicle owner may become a Warranted Owner during the 24 month/24,000 mile time and mileage limits of this Warranty, by submitting to Chevrolet through an authorized Chevrolet Dealer a properly executed Transfer of Warranty form together with the former Warranted Owner's Protect-O-Plate within 30 days or 1,000 miles usage following the date of acquisition of the Vehicle by the subsequent Vehicle owner. If the Vehicle is still within the 24 month/24,000 mile time and mileage limits of this Warranty and there is satisfactory evidence that the maintenance services required under this Warranty have been performed on the Vehicle, Chevrolet will register the Vehicle owner as the Warranted Owner and the authorized Dealer, acting for Chevrolet and at a nominal charge not exceeding $2.00, will issue a new Protect-O-Plate for insertion in the Owner Protection Plan booklet to identify that person as a Warranted Owner for the unexpired portion of the 24 month/24,000 mile time and mileage limits of this Warranty. If instead, the applicant submits a properly executed 5 year/50,000 mile Warranty Application form, the authorized dealer, acting for Chevrolet and at a total charge not exceeding $25.000, will issue a new Protect-O-Plate to identify that person as a Warranted Owner for the unexpired portion of the 24 month/ 24,000 mile and the 5 year/50,000 mile time and mileage limits of this Warranty Upon the expiration of the 24 month/24,000 mile time and mileage limits of this Warranty, the then Warranted Owner shall cease being a Warranted Owner unless he shall previously have been issued a new Protect-O-Plate identifying him as a 5 year/50,000 mile Warranted Owner. Upon the expiration of the 24 month/

24,000 mile time and mileage limits of this Warranty, however, the then Warranted Owner may submit through an authorized Chevrolet Dealer a properly executed 5 year/50,000 mile Warranty Application form to Chevrolet within 30 days or 1,000 miles from the date of expiration of the 24 month/24,000 mile time and mileage limits of this Warranty. If there is satisfactory evidence that maintenance services required under this Warranty have been performed on the Vehicle, Chevrolet will re-register the Owner as the Warranted Owner. The authorized Dealer, acting for Chevrolet and at a charge not exceeding $25.00, will then issue a new Protect-O-Plate for insertion in the Owner Protection Plan booklet to identify that person as a Warranted Owner for any unexpired portion of the 5 year/50,000 mile Warranty. The first owner of the Vehicle for use and not for resale, following disposition of the Vehicle by the first Warranted Owner after the date of expiration of the 24 month/24,000 mile time and mileage limits of this Warranty, may become a Warranted Owner by submitting to Chevrolet through an authorized Chevrolet Dealer a properly executed Warranty Application form together with the first Warranted Owner's Protect-O-Plate within 30 days or 1,000 miles usage following the date of acquisition. If the Vehicle is still within the time and mileage limits of this Warranty and there is satisfactory evidence that the maintenance services required under this Warranty have been performed on the Vehicle, Chevrolet will register the Vehicle owner as the Warranted Owner and the authorized Dealer, acting for Chevrolet and at a charge not exceeding $25.00, will issue a new Protect-O-Plate for insertion in the Owner Protection Plan booklet to identify that person as a 5 year/50,000 mile Warranted Owner. * * * Repair or replacement under this Warranty shall be performed by any authorized Chevrolet Dealer at such Dealer's place of business... EXCLUSIONS — This Warranty shall not apply to (1) any Vehicle for which the then owner does not possess a Protect-O-Plate issued by Chevrolet in owner's name for such Vehicle." (p. 3-4, 12317). To clarify the 1968 Chevrolet Warranty, the booklet at p. 1 states: "I FIRST OWNER A. The first owner is eligible for the full benefits of the 24 month/24,000-5 year/50,000 mile warranty coverage. ... II SUBSEQUENT OWNERS OF VEHICLE PRIOR TO 24,000 MILES OR 24 MONTHS FROM DATE ORIGINALLY PLACED IN SERVICE A. Obtain, from the 'seller' the Protect-O-Plate and the Owner Protection Plan booklet, making sure that it is properly validated and/or evidence that Required Maintenance Services have been performed as of the date and mileage on the Vehicle when purchased by you. B. Within 30 days or 1,000 miles after you purchase this Vehicle, have an authorized Chevrolet Dealer submit a properly executed Transfer of Warranty form for the unexpired portion of the 24 month/24,000 mile coverage or, if you so elect, an Application for Warranty form to apply for the unexpired portion of the 5 year/50,000 mile coverage for which a charge will be made. ... II SUBSEQUENT OWNER OF VEHICLE (OTHER THAN FIRST OWNER) AT EXPIRATION OF 24 MONTH/24,000 MILE COVERAGE A. In the event you have not previously done so, you may apply for the unexpired portion of 5 year/50,000 mile coverage through your authorized Chevrolet Dealer before 25,000 miles has expired or the 25th month from the date this vehicle was originally placed in service for which a charge will be made. B. Subsequent owners (other than the second owner) who purchase the Vehicle after expiration of the 24 month/24,000 mile portion of the warranty are not eligible for the 5 year/50,000 mile coverage on power train, suspension and steering components." (p. 1, 12317). As a result of calling Nabcor the first owner, GM made it impossible for Nabcor to deliver a full warranty to the customers of Nabcor. The 1970 Cadillac Warranty states: "NOTICE TO SECOND PURCHASER The second retail purchaser of the Vehicle identified by the Vehicle Identification Number shown above may apply for a Protect-O-Plate entitling him to any unexpired portion of the Warranty Coverage for a fee of $25 through an authorized Cadillac dealer. Application must be made within 30 days or 1,000 miles of Vehicle usage, whichever first occurs, following the date of purchase, and the dealer must inspect the Vehicle and advise Cadillac that it has received the required maintenance. The second purchaser, upon issuance of the Protect-O-Plate, will be required to pay the first $25 on each repair or replacement made with respect to each power train component following the expiration of the 12 month/12,000 mile coverage." (12472), delivered by Burke Motor Sales, Inc. to "Nabcar, Inc. or Edward Goodman" on March 31, 1970, "Date of Delivery to Original Retail Purchaser". The 1972 Cadillac New Vehicle Warranty states: "The 12 month/12,000 mile warranty period shall begin on the date the car is delivered to the first retail purchaser.... CADILLAC'S OBLIGATIONS 1. Repairs qualifying under this warranty will be performed by any authorized Cadillac dealer within a reasonable time following delivery of the car to the dealer's place of business. 2. Cadillac will pay the authorized Cadillac dealer for the repair under the warranty.... 3. During the first 90 days of the warranty period, any authorized Cadillac dealer will make the following service adjustments, if needed, at no charge to the owner: Wheel alignment and balancing; Adjusgments to the carburetor, distributor points or timing, drive belts, transmission and brake system; Cleaning of fuel, cooling or brake systems; Tightening of bolts, fasteners and fittings. OWNER'S OBLIGATIONS 1. After the first 90 days of the warranty period, the service adjustments specified in item 3 of 'Cadillac's Obligations' are considered to be items of normal maintenance resulting from use and are to be paid for by the owner. * * * POLICY ON CADILLAC OWNER SERVICE ... 4. WARRANTY SERVICE — UNITED STATES AND CANADA — If you are touring or in the event you move, service under the Cadillac New Vehicle Warranty will be performed by any Cadillac dealer in the United States or Canada. In all other cases, it is recommended that warranty services be performed by the authorized Cadillac dealer who sold you your car because of the dealer's continued and personal interest in you. (12316).

a. Purchaser Must Return to Selling Dealer. The warranties above make it clear to the ordinary reader of the warranty that, unless the purchaser has moved or is touring, the purchaser is to return the car for warranty work to the selling dealer. This restraint upon obtaining warranty work requires that the Nabcor customer go back to the GM dealer who initially sold the car to Nabcor, who might well be 1,000 miles away. Even if the language does not literally say this, the intent seems quite clear, and the language is a deliberate attempt to deter persons from buying their new cars from other than the local franchised dealer; another way for GM to enforce the territorial exclusive. In effect, through this provision, GM has tied the rendering of warranty work under GM's warranty into the dealer's sale of the car, and has restrained new-car customers from going outside of their own areas to buy cars from other dealers (whether franchised by GM or not) at lower prices. Also, this provision stops Nabcor from obtaining cars outside of a given area for sale to Nabcor's customers within the area, which enforces the illegal territorial exclusive given by GM to its dealer in the customer's area.

b. Transfer of Original Warranty. GM requires that a "second owner" go to a franchised dealer and arrange for a transfer of the warranty. This requirement is a restraint in trade, to the extent that the initial consumer (Nabcor's customer) is considered a "second owner" by GM and its franchisees, and is designed to take away customers from non-franchised resellers such as Nabcor. This means that the Nabcor customer is not able to buy from Nabcor the full package (new car plus warranty) that the customer is able to buy from a GM dealer, which unlawfully ties in the sale of GM's warranty to the new-car sale made directly to the consumer by a GM dealer, and it prevents non-franchised resellers such as Nabcor from obtaining and passing on to their customers the warranty which many customers deem material in deciding where to buy a new car.

c. Payment of $25 Fee Upon Transfer of Warranty. Not only is the requirement that a Nabcor customer obtain a "transfer" of the warranty illegal, but the requirement that the Nabcor customer pay a $25 fee upon such a transfer is illegal as well. This constitutes an additional cost and burden to purchasers through the Nabcor System, by contract, conspiracy and combination between GM and its respective dealers, to protect the illegal territorial exclusive given to the dealers by GM. The purpose and effect of the restraint is to cast substantial doubts upon the ability of non-franchised resellers to deliver a full factory warranty to the Nabcor customer. The customer sees from the GM warranty that, because of the transfer and fee requirement, he is being treated by GM as a second-class purchaser, which is exactly the case. GM claims that such Nabcor customer is the "second owner" of the car, with Nabcor being the "first" retail purchaser, with the adverse consequences set forth in the GM warranty extracts above.

d. Transfer Must Be within 30 Days or 1,000 Miles. This requirement also imposes a heavy burden on Nabcor and the Nabcor customer, who forfeits all benefits under the GM warranty when he fails to transfer the warranty (and pay the $25 fee) within 30 days or 1,000 miles, whichever comes first. The effect is to eliminate the GM warranty upon the customer's failure to comply with this requirement, which is not even known to most of the Nabcor customers before they purchase the first time. The effect of the rule is to prevent Nabcor from delivering a full GM warranty when it sells the car, and this rule creates doubt in the mind of the Nabcor customer who does not know what the GM requirements are. Therefore, the customer will logically choose to deal with a local GM dealer, at a higher price, who can deliver the full GM warranty and warranty work without question.

e. Reduced Benefits of Warranty Upon Transfer. Even when the Nabcor customer obtains a transfer of the warranty, upon payment of the $25 fee and within the required time and mileage limitations, the duration of the GM warranty does not commence from the date he purchased the car as a new car from Nabcor. Instead, the warranty commences upon transfer, for the remaining portion of the warranty (calculation by deducting the period during which Nabcor held the car). This restriction prevents Nabcor from selling new cars because it prevents Nabcor from delivering a full new-car warranty for whole 1-5 year period, and is an illegal restraint in trade. Also, the restriction is an unlawful tying arrangement between GM and its dealers, in which only the GM dealers are permitted by GM to give a full GM warranty to retail purchasers. Non-franchised dealers are denied this same opportunity, even though the obligation is GM's obligation, and not the selling dealer's. The selling dealer is reimbursed for his work under the GM warranty, regardless of who sold the car. Under the 1968 Chevrolet Warranty, Nabcor cannot deliver one portion thereof because Nabcor is considere as the first retail purchaser, and not able of transferring part of the warranty to a second retail purchaser. Also, under the Cadillac warranty, the second owner must pay a $25 fee each time he receives service on the power trai

f. No Requirement that GM Dealers Honor the Warranty. Although GM's Dealer Selling Agreement states that the "Dealer shall provide satisfactory service to owners and users of Pontiac motor vehicles in Dealer's area of service responsibility ..., perform ... warranty adjustments for owners of any Pontiac motor vehicle which qualifies for adjustments under the provisions of such warranty ... (and) provide prompt, efficient and courteous maintenance and repair service to owners and users of Pontiac motor vehicles" (p. 13), GM does not in fact require that its dealers honor these obligations under their dealer selling agreement with GM. Instead, the GM dealers are allowed by GM to create their own territorial exclusives by the simple practice of refusing to perform warranty work on cars sold by other dealers. As a practical matter, this means that the customer will buy his next new car from the GM dealer located in the customer's own area, or be forced to travel excessive distances to obtain the needed warranty work, from the dealer outside of the area who sold at the lower price. This unknown factor makes it difficult for the customer to buy at lower prices in other areas, because of the uncertainty about the number of times he will need warranty work, and the aggregate value of the work. GM's failure to require its dealers to honor the GM warranty is the dealer's license from GM to create a territorial exclusive for itself, in accordance with GM's wishes, particularly in combination with the other structural practices discussed in this ¶ AA.

g. No Warranty Program for Nabcor's Customers. Although Nabcor was not able to obtain warranty work for its customers who purchased GM cars, GM did not have any warranty programs whereby Nabcor could ensure that its customers could obtain warranty work. Yet, GM did have warranty programs for its qualified fleet purchasers, and even sent employees of the qualified fleet purchasers to GM training centers, to teach them how to repair GM cars. These warranty reimbursement programs for the qualified fleet customers of GM and simultaneous denial of any warranty benefits to customers of wholesale purchasers such as Nabcor, or to Nabcor directly for their benefit, were a deliberate, concerted arrangement between GM and its dealers to prevent Nabcor and its franchisees from selling cars to retail customers in competition with GM's franchisees.

h. GM Penalized Dealers Who Sold to Nabcor. See pp. 269-271 above for a description of documents which show that the GM dealer who sold to Nabcor would have been charged money as a penalty by the Buick Division for selling to Nabcor, if the selling dealer could have been identified at the time. The penalty would have been assessed because the Nabcor customer complained that he could not get warranty work. This penalty and other means used to discourage GM dealers from selling to Nabcor, as discussed in this Part V, are illegal.

i. GM Rate for Warranty Work Is Lower Than for Non-Warranty Work. GM ensures that its dealers will not want to perform warranty work on cars sold by other GM dealers by giving its dealers substantially less for their performance of warranty work than the dealer obtains from customers for performance of the same work outside of the GM warranty. In this way, GM ensures that dealers will not be able to sell cars outside of their territory, because of the known and intended reluctance by GM dealers to service cars they did not sell, even though their franchise requires them to do so. The language used in the GM franchise is not what the contract means in actual practice. GM and its dealers recognize that there is a territorial exclusive granted to the GM dealers, and GM does not require its dealers to live up to the GM franchise to the extent it would destroy the illegal territorial exclusive. The lower rate paid by GM for warranty work ensures that only the selling dealer has any interest in performing the needed warranty work for his own customer, to enable the dealer to keep the customer for purchases in future years. As to persons who bought their GM cars from other dealers, the dealer refuses to do the warranty work. The selling dealer made a higher profit than he should have, in a competitive market, when he sold the car at retail prices to the customers (which gross profit included an amount to offset the dealer's expected loss on anticipated warranty work for such customer). Therefore, this selling dealer is the GM dealer who should perform the warranty work, according to the way the franchise works in actual practice.

j. Dealer Preparation of New Cars. Page 13 of the Dealer Selling Agreement (Bates Pontiac) states that the "Dealer will condition each new motor vehicle before delivery" By requiring that its dealers prepare new cars for delivery, GM unnecessarily thrusts upon the selling dealer a portion of any blame which may be placed when a customer seeks warranty work. Accordingly, part of the required work may not be under GM's warranty, and the customer can only have recourse as against the selling dealer. This is totally unnecessary. This division of responsibility between GM and its dealers is created by GM for the purpose of requiring the car purchaser to return to the selling dealer, so that the selling dealer may determine to what extent the dealer should perform the work without charge to the customer or without reimbursement from GM, or charge GM for the warranty work under the GM warranty. If dealer preparation were eliminated, GM and/or the customer would be responsible for all of the work sought, and the customer could go to any GM dealer and obtain warranty work to the extent he was entitled. This GM requirement of "dealer preparation" is without any meaning except to require that the customer return to the selling dealer for servicing, and the practice is an illegal restraint in trade, by contract, combination or conspiracy between GM and its respective franchisees.

k. Warranty Claims and Audits. GM purposely underpays its dealers for the warranty work performed by them for the reasons stated above, and recognizes that its dealers submit false warranty claims to reduce their own losses on warranty-work performance. GM keeps a records of all warranty claims, and even conducts periodic audits of its dealers to establish how much in dollar amount of the dealers' warranty claims have been fraudulent. This information is then retained by GM until GM needs to bring pressure on a dealer for violating the unwritten territorial exclusives of other GM dealers, such as by gypping cars outside of its area. GM dealers know that the factory has a sword over the head of each dealer, and this keeps the dealer from selling to persons not approved by GM. This control over the dealer makes most of the GM dealers totally controlled by GM, as if they were wholly-owned subsidiaries of GM. This fact as well as the other control mechanisms of GM should be taken into account by the jury when evaluating the testimony of GM's franchisees. For example, Bob Bain Chevrolet was threaten with loss of its GM franchise (a factory-financed deal any way), and a GM official was stationed in Bain's place of business for months to approve each and every warranty claim to be made by Bain. This type of control, together with the realistic threat of loss of franchise, shows how the GM dealers will respond to mere "wishes" or "suggestions" by GM Zone officials not to sell to Nabcor.

1. Sale Price Includes Warranty Work. For reasons given above, the sale price of the new car includes a certain amount of gross profit, to cover the selling dealer's warranty-work expenses which are not reimbursed by GM. This enforces the territorial exclusive by making it unprofitable for dealers other than the selling dealer to perform warranty work, which is the reason that many GM dealers refused to perform warranty work on cars sold through the Nabcor System. The effect is a tying arrangement, illegal under the Sherman Act.

3. Second-Purchaser Concept.

a. See ¶¶ b-e under ¶ 2 above, regarding "second-owner" restrictions under the GM warranty.

b. See pp. 267-8 above regarding "second-owner" restrictions as to refund of the federal excise tax to non-profit educational institutions.

c. The "second-owner" restrictions created by GM also prevent sales by Nabcor for delivery overseas, because the customer has to pay the full amount of the tax upon his purchase from Nabcor and then apply (and wait) for a refund, if it is to be granted at all. When the same customer buys from a GM dealer, he does not have to pay the excise tax to the GM dealer. GM uses the fictitious "second-owner" concept to justify this discriminatory and illegal arrangement.

4. Area of Sales Responsibility.

a. Defined in the Dealers Selling Agreement. This is an area defined in the dealer's selling agreement with GM (commonly called the GM franchise). See discussion of the provision in the Bates Pontiac franchise, at p. 279 above.

b. Dealers Not Permitted to Sell Outside of Territory. GM has an unwritten rule known by all GM dealers, that a dealer is not allowed to "gyp" (i.e., sell) cars at retail outside of his own area of sales responsibility. See JERRY BIGGERS CHEVROLET in Part IV above and the foundation testimony of Kelleher and Kemp. Dealers caught "gypping" cars outside of their territory can be expected to lose their franchise.

c. Dealers Required to Report Identities of Purchasers to GM Prior to Sales. GM requires that its dealers report to whom they are making sales. If the sale is to be made on a "fleet basis", GM requires the dealer to submit the purchaser's identification and fleet certificate number. If the customer does not have a fleet certificate number or appear on the GM National Accounts List, the dealer is obliged to keep records for GM to inspect to show that the customer in fact met the GM fleet requirements (at least when fleet plans are involved). By requiring the GM dealer to request a fleet allotment for fleet purchases, GM ensures that the dealer cannot make fleet sales to non-approved fleet customers. Also, when the dealer orders cars for customers, the dealer advises GM of the name of the customer, and GM has access to the records of the dealer to ascertain to whom the dealer was selling cars to, in any event. The placing of the customer's name on the warranty plate is another way in which GM is able to find out to whom its dealers are selling cars. This is another way that GM exercises control over the dealers as well as the customers.

d. Order Form Identifies Types of Sales Made by Dealer. The GM Wholesale Order Form requires the dealer to identify the type of order: "fleet", "stock" or "sold" (i.e., for a specific customer, according to the customer's specifications). Actually, the type of orders from the dealers' standpoint should be none of GM's business. Each car should be built and delivered to the GM dealer irrespective of the person to whom the car is going to be sold. But the designation requirement gives the GM Zone a chance to interfere with the dealer's business and prevent dealers from selling to persons to whom GM does not want sales to be made, such as Nabcor.

e. Dealers May Not Advertise Outside of Territory. Kemp, Kelleher, AM and FM will testify about the GM restrictions which prevent a dealer from advertising cars outside of his area. This restriction is well known to each GM dealer. The purpose is to prevent dealers from violating the territorial exclusives granted by GM to other dealers. This is a conspiracy by GM and its dealers for the purpose of fixing prices at levels higher than would prevail in a competitive market. Nabcor would have provided such competition, but was stopped.

f. Restrictions upon Drop Shipment of Cars. Prior to 3/3/69, GM would not drop ship cars to fleet users, but as of 3/3/69, GM permitted drop shipments to fleet users if the selling dealer is in the same marketing area, the selling dealer has his own personnel at the drop-ship location, and dealer preparation is done by the selling dealer's personnel. Also, prior approval must be obtained from the Fleet Section, and GM "would like to emphasize that it will not be our policy to encourage drop shipment of vehicles, but rather to approve them on a limited basis only where the individual circumstances would indicate that it would be in GM's best interest." (3/3/69 memo to Divisional Fleet Managers by R. L. Berg, Director (Ex. J to Supp'l Aff't, Prelim. Inj. Mot.) Similar restrictions seem to apply as to drop shipments on retail sales. Approval of GM is necessary before a drop shipment can be arranged between two GM dealers. Also, GM will not require GM dealers to accept drop shipments if they do not want to. Thus, the requirement of dealer preparation by GM is nevertheless left to the discretion of the delivering dealers, who can prevent a sale by another dealer in his territory by refusing to accept delivery. If dealer preparation were not required, a car could be drop shipped to a gas station, for example. Thus, drop shipment restrictions, by concerted action and agreement of GM and the delivering dealer, prevent a selling dealer from making sales into another dealer's territory without such other dealer's permission.

g. Destination Charges: Mandatory and Involving Phantom Freight. The documents to be produced by GM and the testimony by Donner (or other GM officials) will show that GM's destination charges are mandatory, and include an element of phantom freight (i.e., charges for non-existent transportation). The combined effect is that GM dealers cannot use less expensive means to move new cars from one area to another. Each dealer's transportation costs are fixed by GM, which eliminates any competition among dealers and prevents companies such as Nabcor (a company not obliged to honor the GM territorial exclusives) from moving cars from one area to another, which Nabcor could do if destination charges were not mandatory. Nabcor would then pick cars up at the factory, where destination charges would be zero, and move the cars into area where GM was charging its dealers excessively for transportation. If destination charges were not mandatory, Nabcor would still compete by employing means of transportation less expensive than the type then employed by GM. For example, Nabcor or GM dealers could move cars with their own vehicles, at much lower cost than now charged to the GM dealers, and passed on to Nabcor. The amount at stake is often more than $100 per car, a considerable amount in view of the fact that Nabcor was working on a gross profit (on its markup alone) of $50 per car ($225 for the whole Nabcor System).

5. Control by the Zone.

a. The purpose of this control is to prevent dealers from selling cars outside of their territory, which reinforces the territorial exclusives granted illegally to the GM dealers. One technique used to "encourage" dealers not to sell outside of their territory is to have the Zone allocate cars to the offending dealer unfairly, such as by denying a fleet allotment (Kemp) or by giving the dealer "convertibles in the winter", for example. Also, the Zone can reduce the dealer's retail allotment, which would force the dealer out of business in some cases.

b. Directing Fleet Business to Favored Dealers. GM could reward its favored dealers by directing "fleet" business to them. (See Ex. I to Supp'l Aff't, "General Motors Dealer Aids for Developing Fleet Sales and Profits for General Motors Dealers", revised 7/25/69, in which it states:

"5. Advertising and Promotion - Each Division provides advertising and promotion specifically designed to attract fleet users to its products and its dealers." (p. 2). At p. 1, it states: "Manpower - Each Division has a fleet sales staff whose primary function is to assist dealers in their fleet sales activity. Responsibilities of Divisional fleet personnel include the following: ... K. Assist dealers — identify fleet sales opportunities within their area of responsibility." Also, GM penalized non-favored dealers such as Kemp by not directing any fleet business to Kemp at all. This is one of the techniques used by GM to keep control over its dealers.

c. Termination of Franchise or Threat to Terminate. GM has the power to terminate the dealer's franchise by non-renewal after the expiration of the 5-year period. Previously, after the 2nd World War, the franchise lasted for only 1 year. Enactment of the federal Dealer's Day in Court Act has not changed the importance of GM's ability to terminate the GM franchisee. GM has the same power over the dealer. The power is used subtly at times, by sending prospective purchasers into the dealer's place of business, when the dealer is unaware that he is expected to sell his business. He quickly gets the point. Termination of a GM franchise is sudden death for the dealer. His license as a GM dealer is taken away; his building is useless for anything other than a factory franchise, but his rent continues nevertheless; his sources of new-car financing are cut off and obligations become due immediately, which he usually cannot meet; also, his parts inventory becomes useless, and GM buys it back as used parts in some instances. Accordingly, the loss of a GM franchise would be financial disaster for most dealers, and ultimately any dealer can be expected to abide by GM's "wishes" to avoid any such disastrous consequence.

d. Evaluation of Dealer Performance. Every year, Zone personnel evaluate the performance of their GM dealers (Rock 93-4) and poor performers can be expected to lose their franchise or suffer other penalties. The evaluation is based to a great extent on R. L. Polk statistics, which show what percentage of new GM cars first registered in the dealer's area were cars of the type sold by the GM dealer in the area. Pages 11-12 of the Bates Pontiac franchise provides: "A. Responsibility for Sales. Dealer shall provide satisfactory sales performance in Dealer's area of sales responsibility Evaluation of Dealer's sales performance shall be based on the relationship of Dealer's sales of new Pontiac motor vehicles in such area to the sales of other makes of motor vehicles directly competitive therewith both in price and in product in such area, as compared to a similar relationship of the sales of new Pontiac motor vehicles to other makes of motor vehicles directly competitive therewith specifically in the Pontiac Zone area wherein Dealer is located, but not necessarily to the exclusion of the Pontiac Regional area or the National area. Such evaluation shall be based on records generally accepted for such purposes by the automobile industry and shall also take into account other pertinent factors, such as the trend of Dealer's sales performance over a reasonable period of time, the availability and the delivery of Pontiac motor vehicles to Dealer, and local conditions directly affecting such sales performance. Where one or more other Pontiac dealers are located within the area described in Paragraph FIRST, the evaluation of the combined sales performance of all Pontiac dealers in such area shall be made as provided above, and Dealer's sales performance shall be measured by Dealer's contribution to the combined sales performance of all Pontiac dealers in such area. In evaluating Dealer's contribution to such combined sales performance, consideration shall be given to such factors as Dealer's sales performance over a reasonable period of time, the availability and delivery of Pontiac motor vehicles to Dealer, the geographic location of Dealer's place of business and the general shopping habits of the buying public within such area, Dealer's sales participation experience within such area, and Dealer's standard of sales participation within such area previously determined and accepted by Dealer and Pontiac." Because of the vague standards, GM can terminate any dealer at any time without liability for breach of contract or under the Dealer's Day in Court Act. As a result, the dealer is totally under GM's domination and control.

If the dealer bought substantially more cars for retail resale than appeared as registered new cars in his area, the dealer would be penalized, and perhaps lose his franchise. It would be obvious that he was selling outside of his territory. Thus, the dealer knew that he could not sell to Nabcor when the car was going to be delivered and first registered outside of the dealer's area, unless the dealer first sold the car to a captive leasing company (such as Colonial Cadillac's Mercer Leasing), then registered the car in the name of the leasing company (to obtain credit for the sale during the dealer evaluation by Zone officials), then sold the car (as a used car, arguably) to Nabcor, for resale by Nabcor outside of the dealer's territory. Fleet sales by a dealer do not count towards the dealer's performance. The evaluation depends on where the cars are sold by the dealer for first registration, rather than the number of cars the dealer sells, which means that GM is creating a restraint by penalizing a dealer who makes many sales but in the area of other dealers. Also, the dealer is penalized when he sells outside his territory because the dealer is not able to obtain all of the cars he needs, which forces the dealer to sell all of the cars within his territory to avoid a poor performance rating. This GM program for evaluation of dealers by GM makes the dealers unwilling in many instances to deal with Nabcor. Accordingly, the program of evaluation is illegal as a restraint in trade. Specifically, the evaluation program (i) does not give equal credit to the dealer for fleet sales; (ii) it penalizes the dealer for cars first registered outside of the dealer's territory sold by him, or for sales made by other dealers first registered in his area; (iii) the limitation of the dealer's retail allotment forces the dealer to sell all of the retail allotment in the dealer's own territory to maximize his performance; (iv) the GM program forces dealer's to hide title from GM so that GM does not see that the dealer is selling outside of his territory; and (vi) GM dealers are forced by the GM program to sell from their leasing companies so that the first registration of the cars appears in the dealer's territory.

e. Reduced Retail Allocation by Cars Sold Ex-Territory. GM often reduces the dealer's retail allotment by the number of cars a dealer has sold for first registration outside of the dealer's own territory. The GM Zone has the power to do this, and each GM dealer knows this. GM threatened to do this to Kemp.

f. Periodic Visits by Zone and Inspection of Records. Pages 10-11 of the Bates Pontiac Dealer Selling Agreement require the dealer to keep up-to-date records on all sales and servicing, and make them available to GM. Also, the dealer agrees to permit examination of its accounts and records by GM. A Zone representative visits with each dealer periodically, perhaps weekly or every other week, to ensure the dealer is kept in line. GM also makes the dealer file periodic reports with GM of the most intimate financial nature, and GM learns from the dealer where each car is being sold, at what prices and on what basis. The dealer cannot hide very much from GM and is therefore not able or willing to conduct his business in the way he wants, because of this total control exercised by GM.

g. Dealer Sends Financial Statements to GM. By being required to send financial statements to GM, the dealer is obliged to disclose to GM exactly what GM has to do to put the dealer out of business, if the dealer gets out of line. For example, by charging back sufficient warranty claims to more than use up any available cash of the dealer, GM can deliberately put a dealer out of business in a subtle way, but only because of this control that GM has over each of its dealers. From the financial statements, GM knows exactly how many cars the dealer must sell to survive, and GM can reduce the number allotted to the dealer to several cars fewer than that critical number, if control is needed to be exercised over the dealer. This control makes it impossible for dealers to withstand any "suggestions" by GM that the dealer not deal with Nabcor. Even in some instances where GM may not have actually directed the dealer not to deal with Nabcor, the result achieved was the same. By GM merely announcing its displeasure at something, such as a dealer dealing with Nabcor, the dealers would normally follow the GM suggestion or wish to the letter, to avoid any trouble with GM.

h. Factory-Financed Dealers Are Totally Controlled by GM. Dealers financed by GM's Motors Holding Cp. are totally controlled by GM, such as Bain Chevrolet, and Kemp Cadillac-Pontiac. Although there are three corporate directors, two of them are appointed by Motors Holding Corporation. Kemp had to obtain permission from these two GM directors for Kemp to have his dealership go into the leasing business, which permission was delayed for some substantial length of time. Another restriction is that the nominal owner (Bain, Kemp) is not allowed to buy out GM's interest in the dealership except out of his share of the dealership profits (after dealership taxes), if any, and after payment by the individual franchisee of his own personal taxes on the profits distributed to him. The result is that very few of the nominal franchisees are able to buy out GM's interest, and this seems to be the way GM wants it, to own these dealerships itself, in competition with other dealers who are self-capitalized. Even if Bain or Kemp were to find or inherit a million dollars, the agreement with GM's Motors Holding Corporation prohibits the use of any of this money or any other assets of Bain or Kemp to buy out GM's interest. Thus, GM has a definite and desired financial interest in the company-financed dealership and the nominal owner (Bain, Kemp) is, in effect an employee of GM, and should be considered as such at trial, to the extent a witness is still a GM franchisee.

CONCLUSION

The purpose of these practices by GM and its franchisees is to fix the retail prices of GM cars at unnaturally high levels, a conspiratorial practice known as price fixing — a per se restraint in trade, carried out through illegal, concerted refusals to deal, boycotts, blacklists, whitelists, the cutting back of retail allotments, denial or reduction of fleet allotments, territorial exclusives, customer allocations, market allocations, tying sales of warranty work and non-warranty work with the sale of the car, terminations of franchises, threats to terminate franchises, reporting of all facets of the dealer's business to GM, to name only a few of the practices.

This control over dealers by GM is why approximately 70 GM dealers stopped selling to Nabcor after they had originally agreed (usually in writing to sell cars to Nabcor, and this explains why so many hundreds of other GM dealers refused at the outset to deal with Nabcor and its franchisees. The GM distribution system is illegal per se, but GM still needed direct action against Nabcor and its franchisees to prevent them from doing business.

The evidence against the GM Co-Conspirators is more than sufficient to require the entry of a partial summary judgment against them as to the issue of liability under the Sherman Act, particularly as to the fleet allotment and the warranty restrictions.

Dated: New York, New York
January 26, 1976

Carl E. Person
Attorney for Plaintiffs
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

TO: Counsel for All Defendants.

THE COURT: On November 13th and November 20, 1975, I had thought at that time, which I guess was a little visionary, that by getting Mr. Person to specify his contentions about the evidence he would present in at least the first phase of the case, the alleged wrong-doing of General Motors, then perhaps we could somehow get the issues narrowed.

Now, it became apparent after two sessions that a few things were demonstrated. First it was helpful I think, to hear Mr. Person outline his plan of evidence and see the type of evidence he intended to introduce, but obviously we could have sat around for hours and hours and hours hearing more of that, if we had pursued it in that format.

So, I asked Mr. Person to make a written submission, and the result was that in late January Mr. Person submitted a 305-page document describing his evidence. Now, I will be perfectly frank with everybody. I haven't read that, it's voluminous, but I am going to assume that at least this is his submission, and if it carries on in written form what he gave us in oral form of those two meetings in November, I assume it will be quite useful even though hotly contested.

THE COURT: And I dismissed those counts.

MR. PERSON: No, you intended to keep the evidence but you thought that the count --

THE COURT: Wait a minute. I am just asking if I dismissed them.

MR. PERSON: Only because you said it was covered by Counts 1 through 3, and that it was part of that.

THE COURT: Just take it one step at a time.

Did I dismiss a later warranty count as to Chrysler and AMC? Just don't tell me why I did it. Did I do it?

MR. PERSON: I would say that you have done that, yes.

THE COURT: All right. And the same for the destination charge?

MR. PERSON: I don't think that you dismissed that for that reason. I don't think -- I think you limited it to the issue of trans-shipment.

THE COURT: Well, look, I don't want to get -- I did not review all that to come here this morning and I don't want to get bogged down. Let's come back to the main thing, because no matter how it's handled, the warranty thing and the destination charge thing are not in my view central to this case. You may disagree but I will put them aside for the moment.

I would like to come back to what we were talking about in November and what you addressed yourself to in the long memorandum, and that is the charge of conspiracy by General Motors and Ford to put your clients out of business.

Now, just completely laying aside as an open question how we handle warranty and destination charges, you believe that the conspiracy claims against Ford and General Motors and their dealers and maybe the Trade Association could be separated out, handled in one trial, do you?

MR. PERSON: It could be, yes.

THE COURT: Are you willing to have that done?

MR. PERSON: Yes.

THE COURT: If the defendants are willing?

MR. PERSON: Yes. I don't think they would be willing.

THE COURT: You demanded a jury, right?

MR. PERSON: Correct.

THE COURT: All right. I take it that that means you would be willing to have a jury impaneled and respect to each.

You have GM, Ford, Chrysler and American Motors.

THE COURT: Do you agree that -- do you claim that Ford took action similar to the actions you claim were taken by the General Motors dealers, that is, they occasionally denied cars to NABCOR because of orders given to them from the factory people?

MR. PERSON: Yes, your Honor.

THE COURT: That is a similar kind of thing that you allege against General Motors, right?

MR. PERSON: That is correct, but not against American Motors --

THE COURT: Wait a minute. I'm talking about Ford.

MR. PERSON: Correct, your Honor.

THE COURT: All right.

Do you claim that this was the result of a common understanding or agreement of some kind between Ford and General Motors?

MR. PERSON: Including Ford and General Motors, yes, your Honor, and overall conspiracy, but not a direct -- I can't prove as you --

THE COURT: You never can. You don't need to get into that.

You are claiming that you want to try to prove by circumstantial evidence that there was an agreement between at least Ford and General Motors?

MR. PERSON: And their respective dealers, yes.

THE COURT: And their respective dealers.

MR. PERSON: Right.

THE COURT: I don't think it would be useful to let Ford out. You may not be able to prove it against anybody but that isn't the point, but why have two trials?

MR. NORFOLK: Let me respond if I may, your Honor, and I think it comes at two levels.

THE COURT: Let me see -- does General Motors have a position on this.

MR. KLEINBARD: I have a slightly different position which I would like to be heard on when he is through. I don't want to interrupt Mr. Norfolk's presentation on this particular issue.

THE COURT: I don't want to spend forever on the severance point.

MR. KLEINBARD: My problem is I would like to see the non-automobile defendants, which your Honor

MR. KLEINBARD: We are under an injunction from your Honor as of November 5th cutting off discovery. Since that time the plaintiff has filed this very lengthy pre-trial brief. Whereas we started out with a case that had 43 GM dealers and then it was increased somewhat in the third set of interrogatories, we now, in the pre-trial brief, have 81 GM dealers.

There has got to be --

THE COURT: How did the other forty or so come in? Did they come in as witnesses?

MR. KLEINBARD: No, no. These are co-conspirators and in some cases defendants.

THE COURT: He is not adding defendants.

MR. KLEINBARD: I beg your pardon. They are co-conspirators. These are 81 co-conspirator dealers.

THE COURT: Let me just be clear.

MR. KLEINBARD: The problem we have --

THE COURT: One moment. Did you, in your discovery, ask to have named all the alleged conspirator dealers?

MR. KLEINBARD: In our third set of interrogatories. We asked them before and I think we asked them again.

MR. KAPLAN: What happened is this, your

general at that time, and you can absent yourself until then. At that point it might be very clear to me that I can separate the trial and have a trial as to General Motors. It is not clear to me now. So it is up to you, and I am going to cease discussion of the matter now.

MR. KROHLEY: I would like to note my objection to this proceeding for the record, your Honor.

THE COURT. Can we discuss the substantive problems about General Motors, and if you can get a copy of this large book which I was hoping you would have with you we will go ahead and talk about that.

MR. KLEINBARD: Your Honor, may I -- while we are addressing ourselves to the General Motors problems, your Honor, there are a number of issues of general application that would make our life a lot easier and advance this case a lot easier if we can take up, and they are outlined in Mr. Kaplan's letter which was written during my absence.

I wondered if we could take up those points, your Honor, because if this application were to be granted, certain broad areas of the case would go out.

THE COURT: Have you finished up --

Honor, in the complaint there were some forty odd General Motors dealers named as defendants.

Subsequently, we posed interrogatories to Mr. Person about what dealers -- and I could dig out the exact language here if it becomes important -- but about who you spoke to about dealers alleged in the complaint to have been co-conspirators on various subjects, such as fleets and various other things.

The objective of that interrogatory was to have had out who we should talk to to prepare to meet the case that we thought was alleged in the complaint.

THE COURT: Did you ask him to specify all dealers he claimed to be co-conspirators? Was it in that form?

MR. KAPLAN: The complaint purports to do so, as we understand it. There are over 40 of them, 90 named co-conspirators who aren't defendants in this case. The complaint lists over 130 or 240 alleged co-conspirators by name. So we thought we knew who was in the game.

Then we asked him who at these various dealerships did you talk to on various subjects? We wanted to go out and talk to them and find out what the facts were.

So Mr. Person responded as if there were not 40 dealers named in the complaint but as if there were some sixty off, or whatever the number happens to be, dealers. That was in December of --

THE COURT: I am sorry to interrupt you. I want to --

MR. KAPLAN: What I mean by that is this --

THE COURT: Let me go back one step.

You are saying that out of all the alleged co-conspirators referred to in the complaint there were 40 GM dealers, approximately, alleged to be co-conspirators, right?

MR. KLEINBARD: About 43.

THE COURT: 43.

You asked in your interrogatories about persons at these 43 who had --

MR. KAPLAN: That is correct.

THE COURT: And in the answers to interrogatories you got back references to persons at how many dealers?

MR. KAPLAN: 74.

THE COURT: 74.

Then what happened?

MR. KAPLAN: Then we brought that to your Honor's attention and your Honor -- we asked you to strike the additions and your Honor said, well, you weren't prepared to do it at that time, but no more new ones, Mr. Person.

Now, at that time we had already completed depositions of some of Mr. Person's witnesses on the premise that there were 43.

Now we are up to 74. That is at the beginning of 1975. We then went through the deposition of Anthony Maiorana and some other depositions on the premise that there were 74.

The pre-trial brief now has the number in the 90s. We have substantially completed our depositions on the premise at various times that there were forty odd dealers and then seventy odd dealers and now in the 90s.

THE COURT: When you say there are -- in what way do the other 20 or so appear in pre-trial submissions?

MR. KAPLAN: In a number of ways, but the most serious is this:

Now, in 1976, for the first time, there are cases in which Mr. Person claims that in the late 1960s, years before the complaint was filed, dealers acting on instructions from General Motors refused to sell cars to his client and told his client at that time that the reason they wouldn't sell was because of instructions from General Motors.

The letter outlines one such case. Edwards Chevrolet in Illinois somewhere, I think --

MR. KLEINBARD: The bottm of page 2 and the top of page 3 of the letter.

MR. PERSON: That was a '70 matter, your Honor.

THE COURT: Here is the thing, Mr. Person, I would say this, that the case is -- it is pretty hard to control, and I don't think any of us have done a good job of controlling it, but I think there does come a time, and if you -- every time you add a dealer or reference to a dealer and say that that dealer refused to sell to NABCOR on instructions from General Motors, that is another substantive problem in the case.

It sent just a reference to a witness. It is a basic type of claim.

I think that -- let me ask you this:

Could you consent -- I will start there --

could you consent to striking references to other dealers besides those 75 or so that apparently they are willing to -- at least I was willing to let into the case? I didn't freeze it. I didn't freeze you off at 43.

MR. PERSON: I might have drawn some of them, your Honor, from the documents that were produced during discovery, so it isn't that they are unaware of these people, for the most part.

THE COURT: Wait a minute. I have always felt that the issue of dealers who withheld cars from your clients, that was something which had to be the subject of some specific claim by you and I did want to have those claims crystalized so that the discovery would be completed.

Every time you add an allegation of a dealer denying cars, they have to take depositions, and if there are 20 more of these things that is 20 more dealers that they have to chase after and I have to worry about, and that is not a small thing.

MR. PERSON: Your Honor, two points:

Number one, we have disclosed our evidence as to each of these dealers that we are discussing. It is already in the pre-trial memorandum. That is our evidence.

Number two, they haven't taken a deposition of any dealer.

MR. KLEINBARD: Your Honor --

THE COURT: He is just saying you are not prejudiced because you wouldn't oppose him anyway.

MR. KLEINBARD: Taking the Edwards illustration that we have in the letter, that refers to an incident in 1967. That is nine years ago. I learned about it for the first time during one of the last depositions of Frank Maiorana, and we paid no attention to it at that time, it already being late October of 1975, and until we have had an application as to whether or not he could -- we tried to go on to those people that were already identified. At this point nine years later I have got to try and find out who was present at the time that these alleged converations took place.

That is a substantial prejudice. He knew about this since 1967. Why am I now supposed to go around and chase people, many of whom have changed jobs -- it is not an easy problem to find these people.

THE COURT: Have you interviewed or --

MR. KLEINBARD: We have interviewed as many people as we could consistent with other commitments in this and other cases at the various dealers.

We have not interviewed or tried to interview any of the people that have been added since the late 1974 interrogatories by this pre-trial memorandum.

THE COURT: Have you taken depositions of dealers?

MR. KLEINBARD: No. We deposed his people on that and we know what we are going to do with our dealers, but we are now reaching the point where we are getting dealers and employees of dealers mentioned so long after events that have taken place that I seriously doubt even if we will be able to find them much less take their depositions.

There comes a point in any case, your Honor, where a plaintiff who has known from the start what his complaints were, or should have known what his complaints were, ought to stop because otherwise we are just going to have an accordian type of examination. I would like to get back to being able to examine Mr. Maiorana and complete that examination with respect to the 1974 list. I am prepared to go that far, which is already an addition of some thirty odd dealers over the complaint, but we are half-way there and I don't mind completing it.

MR. PERSON: Many of those names I believe added to the '74 list have been drawn from the documents produced by GM and GMAC so that they are not unaware of those.

THE COURT: When did you get those documents?

MR. PERSON: I forget exactly the date of production of them, your Honor. But I have gone over the documents --

THE COURT: I imagine, Mr. Person, that there is so much. You talk about 70 dealers or 90 dealers that you allege refused to sell cars. This was --

MR. PERSON: There were many more than that. There were many others who refused to sell cars outright without any apparent conspiracy other than the franchise agreement. These are ones with whom there was a contact that was stated to us.

So that that is the tip of the iceberg. If you want to go further to all the refusals, there are hundreds of refusals, thousands, maybe -- hundreds anyway.

THE COURT: I am inclined to grant Mr. Kleinbard's request for a cutoff because --

MR. PERSON: They asked and Mr. Maiorana responded with Edwards Chevrolet. Why are they complaining? Why ask the question if they didn't want the response? My client gave him the name of the dealers. We have a list that is complete. There is plenty of time to trial. They have had years for most of these, and the added few aren't any burden to them.

THE COURT: He says it is 20.

MR. PERSON: Drawn from their list, I thihk for the most part --

THE COURT: What do you mean their list?

MR. PERSON: The documents produced by GM and GMAC contain the names of people unknown to us previously.

THE COURT: In what connection?

MR. PERSON: Complaining to zone personnel, or participating in documents relating to NABCOR with GM officials --

THE COURT: Did you have those documents before you answered the interrogatories?

MR. PERSON: I do not recall whether I did or whether I didn't.

MR. KLEINBARD: They are in July of '74, your Honor, and there is the added part --

THE COURT: What is in July of '74?

MR. KLEINBARD: The documents were produced in July of '74.

THE COURT: What about the interrogatories?

MR. KLEINBARD: His interrogatories were answered in December of '74. We have here --

THE COURT: You are talking about a cutoff based upon his answers to your interrogatories.

MR. KLEINBARD: That is correct.

THE COURT: You are saying they came six months later after the documents?

MR. KLEINBARD: One other thing, when he is talking about a refusal to deal or -- he doesn't need my documents for that, if he wasn't able to sell cars, these are almost all oral communications as indeed the particular episode we have been talking about so states in his own pre-trial memorandum.

THE COURT: I am going to say that as far as dealers refusals to deal with NABCOR or its owner organizations, a list of such GM dealers who did this, or allegedly did this, will be cut off as of the list stated in December '74 answers to interrogatories.

MR. KLEINBARD: I assume that that applies with respect also to these warranties claims where you may have an additional several people. But the same principle applies, that is to say, there were interrogatory answers by us and interrogatory answers by him, and the same interval of time and everything, and I don't want to cut the case on boycott and expand it on warranties.

THE COURT: That is satisfactory. What I had in mind, Mr. Person, is this, that when you started talking, you know, in November, there were some references to dealers who you heard about in the very beginning of the case, and you were using those as illustrative, and it seemed to me, and it seems to me now, that you can present your case through '74, subject as well as you can through 91 or so.

I am not trying to prevent you from illustrating the problem to the jury that you claim your clients have.

For present purposes, I feel I have to have a cutoff so we can know what we are dealing with. I have to know what I am dealing with; the defendants do, too.

I would like to get through these procedural things and focus on the substantive matters.

MR. KLEINBARD: The only reason I asked this, your Honor, if you are going to want a September trial, and we do too, we have to get going on resuming our examinations -- we have to have your Honor's proscriptions lifted so we can start finishing up the depositions so we can know the area and scope of it.

There are a few more of these types of questions and then I would ask your Honor to permit us to go ahead.

The second item is a similar one, with respect to the witnesses. Your Honor may recall that back in October of 1974, in response to a request from you you asked for what you referred to as I think an ironclad witness list, and in response to that we -- the plaintiff did identify 58 witnesses that they were going to call at trial.

In the pre-trial brief we have 24 witnesses listed which are not listed on the October witness list.

This is again another illustration of the same thing. If you stop to imagine a trial with the number of people we are talking about, I think that just calling these dealer people alone is going to involve more than a month, andthat is irrespective of these witnesses.

Again, we can't have, except on the most extraordinary showing, where he just found somebody that he never had any clue about before -- and he ought to be made to make such an application before we can extend it, your Honor --

THE COURT: What about that, Mr. Person?

MR. PERSON: Some of those witnesses were with respect to the warranty and the witness list never purported to cover any of the warranty claims so that I don't know how many of the witnesses, maybe 10 --

THE COURT: Do you have that document showing 58, do you have that with you?

MR. KAPLAN: We probably do, your Honor. Yes. There are all sorts of my own scribbling and notations on it (handing).

THE COURT: Have you filed this with the Court?

MR. PERSON: Yes, your Honor.

MR. KLEIN: One of our problems, your Honor, is when we do depose any of the plaintiffs, we, of course, have been guided by this October list and other names that have appeared from time to time during the course of this litigation we have abandoned.

Now if they are going to be expanded we have to go back and depose the various plaintiffs with respect to plaintiffswith respect to these witnesses.

MR. PERSON: I have already indicated the information based upon which we would try to prove liability, so I think the reason for terminating the depositions was that I could set forth this information in less expensive fashion, that is I could do it conveniently for all. I have gone ahead to do it. Now they want to go back and get depositions.

I think that is unfair.

THE COURT: I am dealing right now with just the claim that you have included in your latest submission a lot of people as witnesses that weren't referred to in this designation of October 8, 1974.

You mentioned 58. I see lists of 99 and -- in this document of October 8th, there is no 58. Did I misstate the number?

MR. KAPLAN: The 58 were the ones he was sure about. The 99 were the ones he was thinking about. The 24 we are talking about are neither of those.

THE COURT: Where is the sure category?

MR. KAPLAN: The first group.

THE COURT: I have a list of 99 people. I don't see any first group.

MR. KLEINBARD: We have only that one copy so Mr. Kaplan will approach the bench. We are now talking about 24 people who are not on that list of 99.

THE COURT: Where do the 24 people appear in this book?

MR. KLEINBARD: I can give you their names. I don't know that they are necessarily -- yes. Their names are Theresa Strimple Arrant, Victor Bergelson --

THE COURT: Where do they appear? Are they listed as witnesses or are they listed as --

MR. KLEINBARD: They appear scattered through this pre-trial memorandum. I don't have the page --

MR. KAPLAN: Page 11, your Honor.

THE COURT: All right.

MR. KLEINBARD: Then Victor Bergelson at page 26 and 27. Batie G. Bodiya, I may not be pronouncing the names correctly, B-o-d-i-y-a, who is mentioned at page 28, 138 and 192.

Thomas E. Casey, who is at page 30 and 31.

The Connecticut firm Automotive Trade Association at pages 203 to 4, Joseph A. Crowley, who is mentioned at pages 31, 149 to 50; Frank J. Crown --

THE COURT: One moment --

MR. KLEINBARD: Et cetera.

That is just an example, your Honor.

Some of these people are known to us, your Honor, that is to say we have known they existed, but they have not been -- they were not on the witness list and therefore we felt justified in not pursuing them on examination of Mr. Maiorana. If they now appear we do have to depose him about them. Some of them are completely new.

THE COURT: What happened between the time of the October submission and this new submission, Mr. Person?

MR. PERSON: Well, in the case of -- there are several people here who have -- three of the people on the list named so far are customers with warranty problems, so that that was never -- that is, the witness list never purported to cover them at all, so that -- Arrant, Casey and Crowley are three customers. Victor Bergelson was the incident involving an attempt to terminate this lawsuit, and GM has supplied many documents in connection with that.

THE COURT: I am going to hold you to the October list unless I get a specific application -- in other words, the October list, whatever it says was really intended to be definitive.

If developments indicate you should expand that you apply to me, but let's not have new lists with new people just thrown in.

MR. KLEINBARD: There is a third general category, your Honor, that is, the brief contains allegations of events taking place after December 10, 1970. We again have had, I think, more than a year ago, or about a year ago, had a discussion with your Honor at which you indicated that that would be the cutoff date.

I would respectfully suggest that that cutoff date be adhered to.

This was in connection with the possibility of a serving of a supplemental complaint.

THE COURT: I don't remember that at all.

MR. KLEINBARD: This is from the transcript in December of 1974, the actual minutes of December 13th, 1974.

I requested a pre-trial ruling then with respect to pose the 1970 events. It happened in that particular case with respect to damages, and I pointed out that the plaintiff has not served any supplemental complaint with respect to incidents subsequent to December 10, 1970, and your Honor said, "Well, then that is the cutoff."

I repeated that should be the cutoff.

THE COURT: Just go back a sentence or two.

MR. KLEINBARD: Pages 41 to 42 of the transcript. The abstract that I have here says now, "As to the next item in my letter," this was an earlier letter that I had written to your Honor, "it related to the damage period, and I pointed out that there were no incidents, that is, the plaintiffs hadn't served any supplemental complaint with respect to incidents subsequent to December 10, 1970."

Your Honor then replied, "Well, then, that is the cutoff."

And I echoed that, "And that would be the cutoff," .

Again continue using with my comments, "Now, in this paper that he served today, he said he would like to serve a supplemental complaint past December

10th."

You said, "He will have to apply to me for that."

I said, "On formal application, your Honor?"

And you said, "Yes, I am not just prepared to talk about that this morning. Now, if you want to propose a supplemental complaint you had better draft it up. We can have a meeting at which we discuss that, provided the defendants have seen that in advance and we can discuss whether that can be served."

All right. And I said, "All right, and then we will proceed with our discovery."

That was back in December of 1974.

Here we are almost at the end of March in 1976. I think once again the time has passed for post 197 -- December 10, 1970 events to be discussed in a pre-trial brief or any other brief.

Plaintiff has had ample time to come in with that point.

THE COURT: Obviously, Mr. Person, the longer you wait to supplement the matter the more difficult it is for me to entertain the matter and until you have successfully made a motion to serve a supplemental complaint I am not considering matters that would require a supplemental complaint.

MR. KLEINBARD: There are also some new issues we submit raised in this pre-trial memorandum. I think the one that is most obvious is the claim that GM illegally restricts the territory within which GM dealers can do business.

That appears at various pages of the pre-trial brief which I can give your Honor. Your Honor has previously denied discovery on this issue of alleged territorial restraints because the plaintiffs couldn't demonstrate that that issue was alleged in the complaint.

It is really another aspect of the supplemental complaint problem.

Again, we don't wish to examine on this issue, which we regard as not encompassed within this particular case.

THE COURT: Look, Mr. Kleinbard, I don't want to get things disjointed, but what I was hoping to do today -- I think it really ought to be done before we launch into any more discovery -- I would like to get to the -- I would like to take up a few of the things that the plaintiffs rely on most strongly and see what kind of issues are going to be raised as to those things that will be tried.

We had some matters that came out at the November 20th hearing, the November 13th hearing -- there were statements on the record that Mr. Person made about what his evidence would be.

I think the time has come to just grapple with what it is we are going to be trying, regardless of how much evidence comes in -- regardless of that, I have a feeling that it will take a pattern. The pattern will be NABCOR didn't get cars. NABCOR received explanations that the reason was directions from General Motors.

Then there is another part of that pattern of evidence, and that will be inquiries by Mr. Maiorana or somebody else connected with the plaintiffs directly to General Motors and alleged admissions or alleged statements that directly from General Motors to the plaintiffs as to wanting to squeeze out NABCOR, that kind of thing.

My memory is not very fresh on this, but what I would like to do is to get to what is -- do you regard, Mr. Person -- what you regard, Mr. Person, as the most persuasive example, if you were arguing to the jury, you were starting to tell them the most persuasive example of your proof that you could possibly pick out. What is it?

That is something you can answer or not at the moment? I want to get illustrations. I can't grapple in a pre-trial with 300 examples of things.

MR. PERSON: We have various instances which I think are important here and would answer the question. One of them is the several meetings that my client Frank Maiorana has had with Mr. Belcher, who occupied a position as administrative assistant either to Mr. Donner or Mr. Roche, who was either the president or the chairman of the board of GM.

THE COURT: Is that listed in this document?

MR. PERSON: It would be under Frank Maiorana.

THE COURT: Can you share with the defendant--

MR. KLEINBARD: We have notations on our only copy, your Honor. We didn't realize you were going through this today or else I would have brought my own.

THE COURT: Is there any way we can work on this?

MR. PERSON: If you look under Belcher in the index you will find that. The index to witnesses you will find the pages at which the name Belcher appears. Mr. Frank Maiorana testifies as to those meetings.

MR. KLEINBARD: Is your Honor going to be asking for a response from us?

THE COURT: Right.

MR. KLEINBARD: If I may make a suggestion, your Honor, we had no notion we were going to do this today, can you ask Mr. Person to select any time he wants as to those items? We cannot be prepared as to a 300-page pre-trial memorandum.

THE COURT: I know you can't, but I just wanted to get -- figuring out a way to get started to know what the issues would be. Obviously, you are not prepared to respond, and that is all right. I don't want to -- I couldn't force you into anything like that. Let's just take it one step at a time.

MR. KLEINBARD: I have no objection to listening to Mr. Person. We can respond at another time.

THE COURT: Page 74, right. "Frank Maiorana, on or about December 15, 1967 Frank Maiorana telephoned the office of James M. Roche in the New York GM building and talked to staff assistant Edward P. Belcher. Maiorana asked to speak with Roche," and so forth.

Belcher said he could speak for Roche, and so forth.

What is the guts of this, Mr. Person?

MR. PERSON: Frank Maiorana met with Mr. Belcher and advised Mr. Belcher that NABCOR was having problems, particularly up in Buffalo with the zone manager who had told the dealers in the Buffalo area not to deal with NABCOR.

THE COURT: And that the zone manager was whom?

MR. PERSON: Mr. Womack. If it wasn't Mr. Womack directly, it was under him. It was probably the Bob English matter.

THE COURT: What did Belcher say?

MR. PERSON: He sympathized with NABCOR's plight and said he would like to help us out, and this started the application by NABCOR for a fleet certificate, which Mr. Belcher agreed would be a way of curing the problem of dealers being told that we don't have a fleet certificate, therefore, they can't deal with us.

If NABCOR was given the fleet certificate it was agreed between Frank Maiorana and Mr. Belcher that that would probably cure the problem, but Frank

Maiorana said it is really up to GM to curtail their own men and that we would try to cooperate [illegible] even to theextent of putting on a line of leasing or fleet cars in order to qualify for a fleet certificate in a token way, if that was what GM wanted, to make it look good to the dealers.

THE COURT: What ultimately happened?

MR. PERSON: We were denied the fleet certificate after a tremendous amount of energy spent by General Motors in considering the problem.

THE COURT: Let's take a short break. Could you go over -- what I think might help is to take a few examples of things like the Belcher conversations, that I would think would be a very important illustration of your contention, because it involves the fleet certificate.

As I understand it, at the earlier meetings there was also an incident with a Mr. Lowe, in 1968, he was the General Motors zone manager for Chevrolet cars in Washington, and Mr. Maiorana apparently would be prepared to testify that he spoke to Lowe on five or so occasions, and ultimately Lowe said that the Chevrolet dealer, which was Matt Slack, shouldn't have been selling cars to NABCOR at all. Isn't that what you contend?

MR. PERSON: Yes, your Honor.

THE COURT: I take it that is somewhere in here? You allege that that situation where an administrative person at GM made statements directly to Frank Maiorana about --

MR. PERSON: That is correct.

THE COURT: -- about the General Motors intentions.

You also mention something which is -- in other words, if you are going to present evidence of statements directly by General Motors people to the plaintiffs, if that is one order of proof --

MR. PERSON: Your Honor, I have so stated that.

THE COURT: We have talked about primary and secondary, however we want to call it, I would say that is almost primary proof because it doesn't get into the hearsay problems that you may get into otherwise.

Then another order of proof would be -- I guess statements by a dealer to Maiorana that GM said this and that. That might raise -- that is a little different in some ways from a statement directly from GM.

MR. PERSON: I have segregated that in a different part of the memorandum for your convenience.

THE COURT: I think it would be -- I am open to anything anybody wants to do, but I don't think -- it would be helpful, frankly, to select some of these things and see what the issues are on some of these things as samples.

I think it will help us know the type of issues we are going to get involved in at this trial.

I am trying to help us see this more clearly. I don't think it would help me to go through every ounce of this without doing it on a somewyat of a sample basis. We will recess for a few minutes. Then you can figure out a format for selecting illustrative examples of your claims and see what -- give General Motors an opportunity to come back and tell me what their contentions are in rebuttal, and maybe we can get somewhere.

MR. KLEINBARD: Can you give me an indication of how late you are going to sit tonight?

THE COURT: I am not going to sit very late.

(Recess.)

bsrf

THE COURT: What I am thinking is this:

If I were sitting on that jury, I think that there would probably be -- I say "probably" because I don't know -- but there might well be a few important instances involved in the plaintiffs' claim. I would hear the plaintiffs' evidence. I would want to know, just as fast as I could, what the defense evidence would be, and it would be very important to me to know how those few most important salient instances turned out.

If I didn't believe those, probably the -- it wouldn't help me to just find something out there, you know, I wouldn't go on and on thinking about have they succeeded with the Arrant situation, have they succeeded because there would be some central features of the evidence. If they did succeed on those, then the others might be cumulative, although the extent of the damage -- I'm not saying that there won't be some importance in showing the extent and breadth of the effect, I'm not excluding that -- but I think as a test of whether the plaintiff can succeed here on the type of issues, I think -- I'm just repeating myself -- I would find out what General Motors' position is, did they deny the conversations took place? Is it going to be a straight issue of credibility between what Frank Maiorana says about that conversation and what Mr. Lowe or Mr. Belcher say?

Are the witnesses still here or have they died? What is the situation.

Mr. Person, I am just expanding on what I said before the recess, can you heop me out with some illustrations of your claims that we could zero in on, so to speak?

MR. PERSON: A very important one is the Belcher incident, because that brought it to the attention of the top management of GM and Mr. Belcher said that he can't do anything for it, it is out of his hands, he can't do anything, as much as he claims he may have wanted to, it was impossible for him to do anything, it was Detroit or something to that effect.

In other words, that he had suggested the possibility of getting the fleet certificate and we went through and made the application, but in doing so --

THE COURT: Not to get sidetracked, but don't you have to satisfy some criterion to get a fleet certificate? Didn't we go through this before?

MR. PERSON: You do. But our contention is, and I think it is an important part in the case, that the fleet certificate appears to be a technique used by GM to identify those people who are qualified to buy from dealers.

Those who don't have the fleet certificate aren't qualified to buy and those are the people who do it for resale.

THE COURT: Look --

MR. PERSON: It is a code way of saying,"I don't deal with a person who doesn't have the fleet certificate," so the dealers would be sold that we don't have a fleet certificate and they can't deal with us.

THE COURT: I won't get into that today. I remember from our preliminary injunction hearing we had a lot of material about the limitations on giving out fleet certificates, as I recall. But anyway, I think for present purposes that is something you have always emphasized as basic to your case, and so this illustrates that point so it is a good illustration.

MR. PERSON: The fleet certificate does

have the limitations, we are not denying that. But the use of the fleet certificate is such that it injured us.

GM denied us the opportunity to obtain those cars which would have qualified us to receive a fleet certificate, and that was done by our application through Matt Slap to GM for financing which Matt Slap Chevrolet had agreed that it wanted to get for NABCOR and Matt Slap was turned down so that NABCOR could not put on the cars that the -- the rental cars that would have qualified us to --

THE COURT: I'm lost.

MR. PERSON: GMAC only finances through one of its dealers, with some exceptions that may not be relevant.

One of the GM dealers known as Matt Slap, a named co-conspirator had agreed to -- he is the fellow down in the Washington area.

MR. PERSON: He is in the Philadelphia area, or New Jersey, Philadelphia, I think. And he had agreed to sell -- he agreed to financing, he could sell 25 rental cars to NABCOR which would have allowed them to receive a fleet certificate, since we wanted to put on the cars solely for token qualification to meet the minimum requirements, maybe a few more cars, but just to meet in essence the minimum requirements for a fleet certificate so that we could be issued that and be able to overcome the problems when a dealer says that he can't sell to us because we don't have a fleet certificate.

The dealers were willing to sell to us but in many cases they were told by the factory don't sell because they are resellers and they don't have a fleet certificate. The fleet certificate came up many, many times.

THE COURT: You have isolated, at least for purposes of illustration, that business about Mr. Belcher appearing around page 76.

MR. PERSON: Donald Bowling, former principal in plaintiff General --

THE COURT: Where is the material about him?

MR. PERSON: He was present at a conversation with Mr. English, who was the assistant zone manager up in Buffalo under Mr. Womack and Mr. Bowling reports that Mr. English, first of all, was a friend of Mr. Bowling and Mr. English had advised Mr. Bowling privately --

THE COURT: Who was English, again?

MR. PERSON: The assistant zone manager in the Buffalo Chevrolet zone. Mr. English had advised Mr. Bowling that he would make sure that any dealer, or any GM dealer caught selling cars to NABCOR would get no more cars.

Subsequent to that, in the presence of Mr. Bowling and Mr. Hamister and Mr. Hallstead, principals or managers of --

THE COURT: We have been through this before. You are referring to paragraph -- you are referring to the paragraphs about Bowling on pages 29 and 30, correct?

MR. PERSON: Yes.

THE COURT: Going back to Belcher, you are talking about what paragraphs again?

MR. PERSON: They last for quite a while. There were many conversations, telephone and several in person.

THE COURT: It starts at page 74, what you have as paragraph 10 and it goes through, I guess, the carryover paragraph on page 77.

MR. PERSON: It is a rather long part because it branches off into the treatment of our application, that is, the meetings in connection with our application for a fleet certificate, plus the matters relating to the financing through GMAC, there are two aspects splitting off in that meeting.

THE COURT: What do you contend was all part of the Belcher situation, so that the General Motors people know what they are supposed to respond to? Take this. You have it all in paragraphs and they might as well know.

MR. KLEINBARD: We know the nature of the Belcher matter.

MR. PERSON: It ends at page 82, your Honor.

THE COURT: What about -- what about this thing about Mr. Lowe that you mentioned before?

MR. KAPLAN: It starts at page 89, your Honor.

THE COURT: We have that.

MR. PERSON: Page 93 paragraph 41. The testimony of Mr. Kelleher and Mr. Kent, which outlines the policies of General Motors in connection with preventing sales --

THE COURT: Who is Kelleher?

MR. PERSON: The former fleet manager of Kent Cadillac-Pontiac.

THE COURT: A division of --

MR. PERSON: It is not a co-conspirator, but somebody who can testify to the policies of General Motors in connection with their own franchise dealers, and they will testify that --

THE COURT: Who is Kellehr?

MR. PERSON: Kelleher is the former fleet manager for Kemp Cadillac.

THE COURT: Which is a dealer, right?

MR. PERSON: A former GM dealer in Connecticut.

THE COURT: What kind of testimony will he give?

MR. KLEINBARD: These are two people who are illustrated by what I said earlier, they are not on the October list --

THE COURT: Let's pass them right now.

MR. PERSON: The repurchase incident relating to Kalbach Buick --

THE COURT: This is another instance.

MR. PERSON: Where the automobile was allocated to us, appeared on the floor, we inspected it. It checked out with the specifications and then the car suddenly was gone and Mr. Batt said that the factory repurchased the car.

THE COURT: This is one instance you gave us back in November, is that right?

MR. PERSON: Yes.

MR. KAPLAN: That is perfectly all right with us, but I might remind your Honor that that incident was the subject of a motion for summary judgment in which there were reams of affidavits filed by everybody involved, and I think the facts as to that are just absolutely fully crystalized.

THE COURT: I just don't remember that.

MR. KAPLAN: Mr. Person claims that Mr. Strimple walked into the Batt dealership, and he saw a car in there that he assumed was his, that he came back a few days later and that he was told that the GM zone had taken the car back when they found out where the car was going. Batt's testimony is, and there is an affidavit in this record, to the effect that it didn't happen, that Strimple came in to buy cars and he sold him everything that he ever ordered, and that it is a fabrication.

MR. PERSON: That is total nonsense.

THE COURT: What is illustrative about the -- you want to go into the Paul Batt situation, and I guess what General Motors is telling me is that the issues are outlined in affidavits.

MR. KLEINBARD: I think it is a straight credibility question there.

THE COURT: Yes. You have the testimony of --

MR. KAPLAN: Mr. Batt.

THE COURT: -- Mr. Batt against Dale Strimple.

MR. PERSON: And Mr. Bowling and the brother-in-law of Mr. Strimple.

THE COURT: What did Bowling have to do with this?

MR. PERSON: He was there at the delivery, or at the time they exspected to receive the car, and Mr. Strimple was there and the brother-in-law of Mr. Strimple, three people, and if you want to weigh the --

MR. KLEINBARD: The brother-in-law, your Honor, is again one of these people who has never appeared before. A man by the name of Wills. He was never previously identified as a witness even in the plaintiff's papers on the motion for summary judgment that we have just referred to.

Under your Honor's ruling he shouldn't be discussed today.

THE COURT: Let's put that aside. We

had the motion for summary judgment. What about some others?

MR. PERSON: In connection with an attempt to obtain Cadillacs from an overseas division of General Motors, the GM employee referred us to the branch, a division of General Motors, the Cadillac Division at Broadway and 57th Street, and they were willing to sell cars to us only if they could put cars in the name of the customer, and as I believe he said -- that is, one of the officials or salesman in this branch indicated an awareness of the problem that NABCOR was having in getting cars, and they would only seel if they could hide the title rather than selling directly to us.

This is a division of General Motors.

THE COURT: Where is that?

MR. PERSON: Under the name Ziebold.

MR. KLEINBARD: He is dead, your Honor.

THE COURT: Has the testimony been taken?

MR. KAPLAN: No, your Honor. The testimony was not taken. He died.

MR. PERSON: He was an official of some sort in the overseas division of General Motors.

THE COURT: Who are you going to rely on for this point?

MR. PERSON: Frank Maiorana and Mr. Ziebold's brother or brother-in-law was a salesman in the Cadillac division.

THE COURT: Is there anybody on the General Motors side who can respond to that?

MR. PERSON: The brother or brother-in-law of Mr. Ziebold plus the manager of the Cadillac division.

THE COURT: Where is that?

MR. KAPLAN: If your Honor please, the brother-in-law is not with General Motors any longer and hasn't been for some time.

MR. PERSON: Paragraphs 6 through 9. Pages 71 through 4, approximately.

THE COURT: So far we have the Belcher situation, the situation involving Bowling overhearing statements by English. We have the Lowe situation in Washington. We have Paul Batt, although that apparently may have been laid out in summary judgment papers, but anyway, that is something that Mr. Person relies on as an illustration.

We have this foreign situation.

MR. PERSON: Your Honor, GM never took a

position, as far as I can recall, in the Paul Batt incident. I don't recall any papers in opposition. I may be wrong. Did you take a position as to what happened?

MR. KAPLAN: We took the position that summary judgment should have been granted. We didn't tell you our version of the story. But Mr. Batt denies it happened. It is not alleged that any GM people were there.

THE COURT: I don't think we have too many of these illustrative matters. Let's review that. I am going to go over the whole thing about Paul Batt. What other illustrations can you come up with? What about that thing we talked about at some length on November 13th, Paul Bain Chevrolet, the efforts to get an agreement to sell a whole lot of Chevrolets and so forth, do you want to go into that?

MR. PERSON: That may be more of the hearsay exception.

THE COURT: You have direct evidence of statements by General Motors, is that right?

MR. PERSON: I was trying to limit it to that. I have set forth all of this material in a whole section of this memorandum, all of the material on which we would rely to show a prima facie case against General Motors.

THE COURT: What is the section of the memorandum that deals with the direct evidence of statements by --

MR. PERSON: The same page range that we have been in is where all that is drawn from, Section 3 which begins at probably pages 12 or 13, somewhere in that area.

All of my prima facie case is set forth there. Or substantially all of it.

MR. KLEINBARD: 3 begins on page 17, your Honor.

THE COURT: And goes to --

MR. PERSON: It is alphabetized by witness.

THE COURT: And goes to 120? All that is your alleged direct statements by General Motors, right?

MR. PERSON: Right. In some cases I have extracts from depositions of GM personnel to illustrate various facets of the GM system, the fleet certificate, for the most part. So I have done it alphabetically by witness and then I -- I may not necessarily call the GM officials as part of the prima facie case, but I wanted to reserve the right to do so.

THE COURT: Is there any help to take these instances and go over them? Maybe it is very simple or maybe it is a waste of time.

What do you think, Mr. Kleinbard?

MR. KLEINBARD: I would say --

THE COURT: I want to get several instances so I get a feel for the case. Maybe this is too few. I don't know. Maybe we should go on and on, what do you think?

MR. KLEINBARD: I would think, your Honor, that just a few of them would give you a flavor of the thing, and I am very, very concerned over our time schedule, and the length of time that it has taken us in the past to get depositions taken, so I am very anxious to give your Honor what you want by way of flavor and then get on to --

THE COURT: I am not interested in getting flavor. I want to know the kind of issues.

MR. KLEINBARD: Whatever it is your Honor wants to have. But I think after that it is important to us, at least, to get our proof ready for trial. On some of these things we have never examined Mr. Maiorana, a gentleman that we have just discovered --

we have just located the address of a fellow by the name of Nash. We have been trying for two years to have had him.

THE COURT: You have not examined Mr. Maiorana? You examined him on the conversations with Belcher?

MR. KLEINBARD: That we have, yes.

THE COURT: And you examined him -- he wasn't involved with Bowling, was he?

MR. KLEINBARD: That is correct.

THE COURT: But you examined him on his conversations with Lowe?

MR. KLEINBARD: Yes.

THE COURT: Was he involved with --

MR. KLEINBARD: I think we have examined him on all the places where we know him to have claimed contact with General Motors personnel direct, in answer to your Honor's question.

THE COURT: Are there any -- is there anything in this book that gives you things to examine him about that you didn't know about before? In other words, does Mr. Person set forth contacts with GM and so forth?

MR. KLEINBARD: Number one, if we are going -- if we are going as I believe we can on the assumption that the new people are eliminated --

THE COURT: We have to.

MR. KLEINBARD: Then I really can't say for sure, your Honor. I would have to consider that and let you know.

We have not finished, of course, on those who have already been named in the answers to the third interrogatories. We were most of the way through when your Honor cut off discovery. But the type of questions I think are either the kind that Mr. Person is talking about today, alleged direct conversations with GM personnel, or they are alleged conversations with dealers and unnamed GM personnel, or deceased GM personnel. There are a number of those situations, and they are almost a pattern in both cases.

And --

MR. PERSON: I'm not sure what he is saying, that I am looking for deceased people to --

MR. KLEINBARD: There are several numbers of deceased people who are GM personnel that Mr. Maiorana claims to have conversations with.

MR. PERSON: They died after the complaint.

THE COURT: In retrospect it now seems kind of funny to have cut off your deposition of Mr. Maiorana, but what I really had in mind was that this is merely a lawsuit, you know, it is not the -- we are not building the Grand Cooley Damn or something like that, and I think that there has to be an end to this.

MR. KLEINBARD: I do too, your Honor.

THE COURT: It seems to me that the deposition of Mr. Maiorana was just -- I heard about this forever.

MR. KLEINBARD: You may have heard about it a lot 00

THE COURT: The depositions of endless witnesses and so forth, and it seemed to me that there must be a way to get this down to being a lawsuit, even if we had to simply select issues to try and eliminate issues to try.

I think maybe we are going to end up having to do that. I don't think we are going to try everything in this book, frankly, because I think that it is merely a lawsuit. It is a very important thing, a lawsuit, but it is not supposed to just go on forever.

What do you think -- you think, Mr. Person, that we can select -- take a month, say to ourselves, we will take a month at the most in trying thelawsuit, whatever can go in a month goes in, whatever doesn't doesn't. We can do our best to pare the case down to a month. A month is a long time. But at least it fixes some limit to the bounds of it.

Couldn't we figure out a way to get this lawsuit into a month, figuring out a selection of issues which are -- will be illuminating to the jury? in one way or another, as to whether you do well or don't do well, and let it go at that.

If you find everything here we could really be around a good long time. I am not sure we would be any better off than if you made the selection.

MR. PERSON: I would suppose that not everything there is going to be presented, particularly if the ruling stands that any of the witnesses that are in addition to who is on the list continues, that means that there is a slimming down already and I can insure that there is some additional slimming down, but the real problem is that I haven't had any discovery in the case, believe it or not, I have never had answers to any substantial amount of my interrogatories. I haven't had --

THE COURT: And you have taken no depositions?

MR. KLEINBARD: He has taken three times

as much as we have, your Honor. He has taken 38 to our 11.

THE COURT: Don't tell me that you have had no discovery.

MR. PERSON: I don't mean it in that respect. I tried to get the various people involved,and many people in General Motors were involved, and I guess the --

THE COURT: I don't think I ever -- I cut off your interrogatories because they were pretty full, but I don't think I ever cut you off from depositions.

MR. PERSON: Several times, your Honor, but all right.

THE COURT: Let's cut this short. I think this, that --

MR. PERSON: Could they respond to -- what answer to the facts that I have alleged? What is their position? I hardly know what to put on without knowing what they would say.

THE COURT: We are going to do two things simultaneously -- it may be a lot of work but it is going to be done -- we are going to head for a trial -- I don't know when the judicial conference is, from day to day until it is finished, and then I would certainly expect that it will be finished next week. Then there is the Nash deposition and so that by three weeks from now we are finished with General Motors' depositions. Then if they feel, and there is no reason why it -- they should not be responding to all this until they finish the depositions. All right. If we are that close they don't need to. Let's assume we have depositions finished that you are taking,Mr. Kleinbard, in three weeks, in what form and when can you respond?

MR. KLEINBARD: I would respond two weeks after that.

THE COURT: In writing? In writing. You want what, Mr. Person?

MR. KLEINBARD: This is with respect to the illustrations that we have discussed today?

THE COURT: Not the whole range, of course not.

MR. PERSON: Your Honor, an important interrogatory that I would like to have them answer is one in which they would identify and describe each of the communications that either GM or GMAC has had with any dealers or other persons concerning my clients.

In other words, I am not able to take depositions to obtain that information so I am really in the dark because I don't know what the communications, other than through the documents that they have already produced, so that they won't duplicate that.

They might have information that I am just unable to get in any way because I don't have the resources to --

THE COURT: Which interrogatory?

MR. PERSON: To identify and describe briefly each communication by General Motors or GMAC with any dealer or other person concerning any of the plaintiffs.

THE COURT: What about that, Mr. Kaplan?

MR. KAPLAN: Your Honor, you had refused to let Mr. Person ask that interrogatory at least two or three times that I remember, for a very simple reason, to the extent any such communications are reflected in documents we have produced them. To the extent that they aren't, I can't imagine how between now and the end of this decade we could go around and ask even the people we know about in the company, who might conceivably have had such a conversation, for every conversation they ever had over the last ten years. That is just totally impractical.

THE COURT: It seems to me, Mr. Person, that you have amassed a pretty healthy list of specific contentions about specific statements made by GM people, actions taken by GM people.

In the course of what we are going to be doing in the pre-trial, we -- I certainly will be interested in smoking out and requiring GM to disclose everything that they know about those contentions, but I think that that is the way it is going to have to be limited.

I don't think I am going to require GM to go around and find out every communication about your client. I don't think it would be useful. I think we are -- it is up to you to present, as you have done, your specific claims naming specific people and you have done apparently a pretty good job of that.

On those claims they are going to have to make a full disclosure. Exactly what form it will take I don't know, but I think as good a form as any is what we have outlined. If there are reasons to believe that they haven't come forward with a full disclosure, well, the normal sanctions are available.

MR. HERBST: My name is Jay Herbst. I

Plaintiffs' Notice of Deposition

SCHEDULE A

Name of Officers or Managing Agents of GM to be Examined:**	Date, Time & Place of Examination
Robert English, Ass't Zone Mgr. Buf.	May 11, 1976, 10:00 a.m.
Robert W. Redmond, Buffalo Zone	May 13, 1976, 10:00 a.m.
Mr. Lowe, Mgr. Wash. Reg. Ofc Chev.	May 13, 1976, 2:00 p.m.
James M. Roche, President	May 17, 1976, 10:00 a.m.
Frederic G. Donner, Chairman	May 20, 1976, 10:00 a.m.
H. E. Crawford, GM Staff Official	May 21, 1976, 10:00 a.m.
Edward P. Belcher, GM Staff Ass't	May 21, 1976, 2:00 p.m.

** Title is not necessarily the present title, but refers to a title held during all or part of the relevant period.

Plaintiffs' Communications
Interrogatories

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421A (TPG)

Plaintiffs, : COMMUNICATIONS INTERROGATORIES

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

TO: Attorneys for Defendants:

General Motors Corporation ("GM")
General Motors Acceptance Corporation ("GMAC")
James M. Roche ("Roche")
Frederic G. Donner ("Donner")
Bob Bain Chevrolet, Inc. ("Bain Chevrolet")
Paul Batt Buick, Inc. ("Batt Buick")
Glen Campbell Chevrolet, Inc. ("Campbell Chevrolet")
Hamister-Gillogly Chevrolet, Inc. ("Hamister-Gillogly Chevrolet")
Paragon Oldsmobile, Inc. ("Paragon Oldsmobile") and
Niagara Frontier Automobile Dealers Association, Inc. ("NFADA").

Pursuant to Rules 33-4 of the Federal Rules of Civil Procedure, the above-named defendants are hereby required to serve upon the undersigned, within 30 days from the date of service hereof, sworn answers to the following interrogatories, designated by plaintiffs as "Communications Interrogatories" and to produce the documents requested as follows:

These interrogatories are continuing interrogatories. If at any time after service of its answers hereto and prior to the trial of this action, any defendant herein obtains additional information responsive to any of these interrogatories the disclosure of which may be required hereby pursuant to Rule 26(e), Fed. R. Civ. P., it shall, within 30 days and in no event later than 5 days before trial, serve supplemental sworn answers setting forth such additional information.

Instructions and Definitions

As used herein, the term:

1. "Document" includes the original and any non-identical copy (regardless of origin) and all drafts of correspondence, memoranda, reports, financial reports, notes, letters, telegrams, messages (including reports, notes and memoranda of telephone conversations and conferences), studies (including marketing studies), analyses, comparisons, books, magazines, newspapers, minutes and other communications, including inter- and intra-office communications, purchase orders, invoices, questionnaires and surveys, charts, graphs, photographs, phonograph or other recordings and other data compilations including all data stored for use in or with electronic data processing equipment from which information can be obtained (translated, if necessary, by these defendants through detection devices into usable form).

2. "Identify" or "state the identification of" means:

(a) when used with reference to a natural person, state his or her full name and present or last-known business and residence addresses;

(b) when used with reference to any entity other than a natural person, state:

(i) its full name;

(ii) the address of its principal place of business;

(c) when used with reference to a document, writing or written communication, to produce the document for inspection and copying at the office of the undersigned on or before July 6, 1976 at 10 A.M. and to state, where not apparent from the face thereof:

(i) the nature of the document (e.g., letter, contract, memorandum);

(ii) its date;

(iii) the name and address of its author and each addressee; and

(iv) its present location or custodian;

(d) when used with reference to an oral communication:

(i) state the date on which it occurred;

(ii) identify each person who was present or overhead the communication when it was made;

(iii) state its substance; and

(iv) identify each document which refers thereto.

Nothing herein shall require the production for inspection and copying of any document heretofore produced herein by any party unless such document shall have had writing placed upon it or otherwise been changed in any manner since it was produced. However, where the identification of such a document is called for, the party responding hereto shall identify it by stating which party or parties produced it, the number it bears or such other information as will enable plaintiffs to locate said document.

4. To enable defendants to refresh the memory of prospective witnesses and other persons, plaintiffs have identified various documents** and anticipated testimony following the name or description of such person.

** Not all relevant documents have been identified.

"GM" refers to the documents numbered and produced by GM, GMAC, Donner and Roche; "N" refers to the documents numbered and produced by plaintiffs; and "p." or "pp." refers to the page or pages in plaintiffs' Pretrial Brief dated January 26, 1976 on which relevant anticipated testimony is set forth. If a person is unable to remember anything more than what is described in one or more of the identified documents, it will be sufficient to state so. If a person can remember more than what is described in one or more of the identified documents, it will be sufficient to describe the substance of a communication by reference to a document in whole or in part, and to describe the substance of any other communications or parts thereof not described in the documents.

4. "Person" shall include natural persons, corporations, partnerships, public corporations, municipal corporations, state governments, local governments and other governmental bodies.

5. "You" or "your" shall mean the defendant separately answering these interrogatories, its predecessors in interest, if any, its present and former officials, executives, officers, employees, agents, attorneys and other persons acting on behalf of the defendant or predecessor in interest.

6. Where an interrogatory requires the statement of a date and the exact date is unknown to the defendant responding thereto, the best available approximation shall be given and the fact that it is an approximation shall be stated explicitly.

7. These interrogatories shall not be construed to call for the disclosure of any privileged communications, except that the existence of

communications claimed to be privileged shall be disclosed by answering ¶¶ 2(a), 2(b)(i), (ii), 2(c)(i), (ii), (iii), (iv), 2(d)(i), (ii), (iv). The substance of any document or communication claimed to be privileged shall not be disclosed, but the nature of the claimed privileged shall be disclosed.

8. These interrogatories are to be answered for the period commencing January 1, 1966 and ending 10 days prior to the service of the answer thereto, unless stated otherwise in the interrogatory. Documents prepared, sent, received or in effect, whether in whole or in part, on or after January 1, 1966 shall be produced if otherwise called for he[illegible], unless stated otherwise in the interrogatory.

Communications Interrogatories

TO BE ANSWERED ONLY BY GM, GMAC, DONNER AND ROCHE:

1. Identify each of the following persons:

Jack Abbe, Cleveland Chevrolet Zone Manager in 1967 (GM 789-795, pp. 264-265);

N. K. Akers, Tarrytown, NY Chevrolet Zone Manager in 1972 (GM 811a-820, p. 266);

Robert S. (?) Anderson, GMAC Special Accounts (GM 281);

J. W. B., person with such initials, probably in Philadelphia Pontiac Zone (GM 806-808). may be James B. Buckland, below;

Barons (GM 110);

F. V. Blesse, Detroit TEF on 3/8/68 (GM 346, 763-784, pp. 254-255);

R. E. Bradley, Ass't Branch Mgr., GMAC Dayton Branch (GM 232, 236-2 259-273, 276, 278-230, 282-287, 289, 303-311, 804-805;

GM official who spoke with W. C. Brennan (GM 803);

Mr. W. J. Brooks, Jr., Administrative Assistant, Pontiac Fleet Sale Pontiac, Michigan on 3/27/68 (GM 158-160);

A. S. Brush, GMAC Vice President, New York, NY (p. 61);

James B. Buckland, Pontiac Motor Division, Office Manager & Product Distributor, Philadelphia Pontiac Zone (GM 156-160);

Red-headed official in Buffalo Buick or Chevrolet Zone who spoke with Reggie Engel of Engel Buick (p. 104);

Secretary in Buffalo Chevrolet Zone who spoke with Strimple (p. 116);

Buick Owner Relations Manager, Detroit, Michigan (GM 212-222);

Gerald J. Burt, Ass't Car Distributor, Philadelphia Pontiac Zone (GM 186-187, 203);

H. L. Busch, Divisional Comptroller, Cadillac, Detroit (GM 347);

Mr. D. (?) Bushall, Special Accounts, probably GMAC Dayton or NYC (GM 281);

W. J. Buxton, Oldsmobile General Sales Mgr. (N 5961-5962);

Person in Cleveland Chevrolet Zone who sent materials relating to Nabcor to Detroit on 9/8/67 (GM 788-794);

Person in Newark Chevrolet Zone who communicated with A. C. Chevrolet (GM 165);

Person(s) in Chevrolet Division who investigated Nabcor (GM 147, 795, p. 258);

Zone Manager or other Zone official who had dinner with Moe Cerota (p. 138);

P. C., person with such initials (GM 130);

Jack Calan, Distributor, Philadelphia Chevrolet Zone (p. 91);

Lloyd Calley of New York City, person who called Wetzel (GM 148, 796-797, p. 257, 260);

Each official of the Cadillac Division on the Board of Directors of the Greater New York, Long Island and Westchester Automobile Dealers Association (pp. 37-38, 40);

Each official of the Cadillac Division on the bulletin mailing list of the Greater New York, Long Island and Westchester Automobile Dealers Association (p. 38);

each person employed by GM, GMAC or any division or subsidiary thereof responsible for compliance by GM with the injunction in the California Discount Case, U. S. v. General Motors Corporation, entered on or about August 18, 1966 in federal district court in California (GM 137, 155, 675);

Chuck Church, Oldsmobile Division (GM 155);

Mr. A. F. Ciapetta, probably in Detroit, who advised Redmond that car sold by Kline Pontiac to Naboor was a fleet sale (GM 133);

Mr. C. D. Clark, Buffalo Pontiac Zone, Customer Relations Mgr. (GM 111-115, 131-133, pp. 30-31, 52-53, 117);

C. D. Clark's Supervisor(s) in Detroit (p. 117);

Edward N. Cole, GM President (GM 755-757, pp. 28, 88, 115, 252);

Albert E. Collier, Cadillac National Distribution Mgr., Detroit, Michigan (p. 31);

Mr. Condrack, Chevrolet Distribution Center, Arlington, Va. (pp. 91-92);

James Conlin, Supervisor of Sales Section of GM, to whom Rock reported (p. 211);

F. J. Connolly, Ass't Branch Mgr., GMAC Philadelphia (GM 261, 276-277);

R. D. Coulter, Mgr., Organization and Analysis Dept., Pontiac Motor Division, Pontiac, Michigan (GM 101, 172-175, 178-179, 182-186, 203-204);

R. Lee Courthey, Ass't Mgr., Fleet Sales Dept., Phila? Chevrolet Zone (GM 345, p. 238);

Mr. H. E. Crawford, GM Marketing Staff, Detroit, Michigan (GM 654-65 pp. 259, 260, 261);

P. J. Crowley, GM Legal Staff (GM 223-224, 741-742, 749, 754, pp. 251, 252, 261-262);

Mr. G. P. Davey, Jr., GMAC Mgr., Detroit TEF (GM 278-280, 289, 291, 804-805);

Judy at Detroit Chevrolet Zone office who spoke with Stolarski (p. 115);

Robert M. DiSimone, Director, Philadelphia Regional Office of the Fleet Section (GM 156, 679-684, 700, 726-727; N 20006; and pp. 23, 24, 43, 66-67, 76, 77-79, 82, 101, 113-114, 182-183, 199, 238-239, 241-243, 245, 248-249);

Frederic G. Donner, GM Chairman (GM 654-657, 668, 685, 749-753, 756-757; pp. 32-33, 239, 244, 252, 257, 261, 269, 280-304);

Dennis L. Dooley, Lease, Fleet & Special Financing, GMAC Executive Office, Detroit, Michigan (GM 235, 261, 276-279);

Mr. Drury, top official of GMAC office in NY (N 2000; and pp. 76-79, 82, 101, 113-114, 182-183, 199, 238-239, 241-243, 245, 248-249);

Herbert Dunham, City Manager, Philadelphia Chevrolet Zone, possibly Fleet Division (GM 345; and p. 238);

Del. Dunn, Pontiac Central Office (GM 122, 124);

Mr. L. J. Dupree, Pontiac, Michigan (GM 176-177);

Hubert B. DuPuis, Ass't Fleet Mgr., Zone Produce Distributor Philadelphia Cadillac Zone (GM 347-350; and pp. 32, 69-70, 146, 268);

Grover Durham, District Mgr., Philadelphia Buick Zone (N 20035-20036; and pp. 65-66, 95);

Ray R. Dykstra, GMAC Dayton Branch (GM 252, 278-279, 291);

T. A. Dykstra, GM Headquarters, Detroit, Michigan (N 5911);

Mr. Echinrode, head of roadmen, Philadelphia Chevrolet Zone (pp. 95, 186);

Mr. W. T. Eckhart, Assistant Zone Manager, New York Pontiac Zone (pp. 84, 86);

Mr. Econ of GM re Stolarski letter (pp. 88, 115);

Enoch Eley, Divisional Comptroller, Pontiac (GM 105-106);

Elizabeth, secretary to Mr. Swope, Buffalo Chevrolet Zone 8/30/68 (GM 339, 341);

Robert English, Assistant Zone Manager, Buffalo Chevrolet Zone (pp. 22, 29, 30, 74-76, 81, 116, 125, 148-149, 164, 248);

Mr. B. R. Everett, Tax & Insurance Dept., Pontiac, Michigan (GM 103-106, 110, 131?);

Emmett P. Feely, high GM official, in Detroit, 6/66 (GM 654-657, 788-795?; and pp. 259, 260, 261);

Mr. A. J. Felton, GMAC Vice President (GM 310);

Mr. H. M. Fleagle, Service Representative, Wilmington or Philadelphia Chevrolet Zone (pp. 31, 65, 94, 147, 149-150;

Don M. Fogg, Fleet Representative, New York Chevrolet Zone (GM 698-701, 704; and pp. 44, 79-80, 245);

Person who met with Fogg, Karney and Frank Maiorana (pp. 44, 79-80);

E. D. Foley, GM Sales Section in Detroit (GM 788-795, 798; and pp. 258-259, 260-261, 266);

Mr. G. R. Frink, Fleet Section, Detroit (GM 732-736; and pp. 250-251);

Dick Gabavitz or Gabavatiz, Chevrolet Distribution Center, Arlington, Va. (p. 91);

Mr. G. E. Geier, Oldsmobile Division (GM 309);

Sid G. Gilliatt, Sales Section, Detroit (GM 169, 788-794, 824?; and p. 266);

GM official who communicated with GM General Counsel Aloysius F. Power, Esq. (GM 655; and p. 259);

each GMAC official in Atlanta, Ga. re termination of Bergelson insurance (GM 281);

each GMAC official who turned down Matt Slap's request to obtain financing for Naboor (p. 68);

GMAC Sales Mgr., Philadelphia Branch (GM 777 - Side 2; and p. 254);

GMAC official, Philadelphia Branch, who communicated with Bob Sloane of Matt Slap Chevrolet (GM 774-776; and pp. 254-256);

William H. Gordon, Jr., Zone Manager, Philadelphia Cadillac Zone, 1972 (GM 347; and pp. 35-36, 70, 146, 269);

Walter Gray, Fleet Sales Manager, New York Pontiac Zone, 12/21/66 (GM 151; and pp. 42, 84-86, 262-263);

Willis E. Hawes, Ass't General Service Manager, Pontiac Motor Division, Pontiac, Michigan (GM 212-222; and pp. 271-272);

P. H. Harrington, Manager & Car Distributor, Pontiac Office (GM 120);

John H. Harwood, National Customer Relations Manager, Pontiac Motor Division, Pontiac, Michigan (GM 100, 102, 105-106, 109, 111, 114, 115, 123, 126, 130, 132-133, 136; and pp. 50, 93-94);

J. Higgins, GM Legal Dept. (GM 261);

R. L. Hodge, GM Owner Relations, GM Headquarters, Detroit, Michigan (N 5912; and p. 97);

Mr. G. B. Hogan, Fleet Sales Mgr., Fleet Sales Dept. of Pontiac Motor Division (GM 172-175, 182-185);

W. P. Holzworth, Manager, New York Pontiac Zone (pp. 84, 86);

Donald Hultin, District Manager, Pontiac Zone, Wilmington, Delaware;

L. P.? J., person with such initials, GMAC official (GM 291);

R. W. Jeffer, Buick Owner Relations, Flint, Michigan (GM 212-222);

V. Jertson, TEF Detroit, GMAC (GM 278-279);

Mr. S. E. Johnson, GMAC Vice President (GM 252, 278-280, 289-290, 804-805);

W. Johnson, Fleet Department;

Mr. J. Walter Johnston, Fleet Sales Mgr., Pontiac, Michigan (GM 169-171, 186, 203-204);

Mr. H. L. Jordan, Ass't Supervisor, Customer Relations, Pontiac, Michigan (GM 131-132);

Raymond Kane, GMAC, Paterson, NJ (N 20006);

Lewis A. Kaplan, Esq. (pp. 61-64);

Mr. G. F. Kerr, Director, Special Financing Executive Office (232-234, 238, 252, 278-280, 289-290, 804-805);

W. Kuck, General Supervisor, Accounting Records or Accounts Receivable, Cadillac Division, Detroit (GM 347);

James R. Kurzen, Customer Relations Manager, Pontiac Motor Division, Jenkintown, Pa. (GM 212-222; and pp. 271-272);

W. K. Laughlin, Buick Motor Division (GM 307);

All members of the GM Legal Staff, to the extent of all non-privileged communications (GM 182, 203-204, 220, 223-224, 261, 276-280, 289-291, 655, 701, 735-736, 749, 754, 796-797, 804-805);

J. P. Love, Dealer Organization Dept., Central Office, Detroit, in 1972 (GM 811a-821);

Loving, GMAC official re Matt Slap Chevrolet (GM 824);

Leo Marcus, Chevrolet Division, Area Code 313 (pp. 88-89, 115);

Marguerite (initials MB? or MAB?) secretary to J. J. Owens, Fleet Section, Detroit, Michigan (GM 142-146; and pp. 256-257);

L. N. Mays, probably divisional fleet department (GM 341);

Vincent A. McCabe, Manager, Buffalo Pontiac Zone (GM 109-110, 114);

Mr. C. McCrary, Manager, Chevrolet Sales Finance (278-280, 291);

Thomas M. McMahon, District Manager, New York Pontiac Zone (pp. 84, 86)

Carl E. Michael, Eastern Region of Pontiac Motor Division (GM 172-175, 182-186, 203-204);

each manager and fleet manager of Midtown Chevrolet Division (GM 653-663, 700, 758; and N 5997-6004, 6006-6007, 6142, 6148, 20079);

each of the two Midtown officials with whom Frank Maiorana spoke by telephone (p. 71);

Don Miller, Philadelphia Pontiac Zone (GM 178-179);

Mr. L. W. Miller, Accounts Receivable, Pontiac, Michigan (GM 203-204)

Richard K. Mobeyg, Customer Relations Manager, Buick Motor Division, Fort Washington, Pa. (GM 212-214; and pp. 269-270);

Zone Manager or Assistant Zone Manager for Buick Philadelphia Zone (GM 213-214, 217; and p. 270);

Bud Moore, Regional Director of the Philadelphia Regional Office of the Fleet Section 1968-9 (p. 214);

E. P. Moran, Manager, Dealer Organization & Analysis Dept., Central Office, Detroit, Michigan (GM 788-794; and p. 266);

B. H. Morse, GMAC Credit Manager (probably Dayton) (GM 281, 288);

Each person at Motors Insurance Corporation of GM which dealt with Matt Slap's request to obtain financing for Nabcor (GM 783-784);

Jack Mullin or Mullen (GM 110, 122);

R. F. Murphy, GMAC New York City (GM 669, 749?; and p. 239);

Mr. J. J. Musselman, Jr., Philadelphia GMAC or Chevrolet Zone (GM 346, 763-764; and pp. 254-255);

N. U. N., person with such initials (GM 130);

D. E. Nelson, Ass't Finance Manager and Vice President, Fleet Section, Executive Office, Detroit, Michigan (GM (306-309);

Mr. R. R. Nelson, Executive Office, GMAC (GM 252, 310);

Official of New York Chevrolet Zone (his name was not Jack Douglas) who spoke with J. James Bonfield of Queen City Chevrolet and Frank Maiorana (pp. 86-87);

N. R. Nunley, GMAC (GM 281, 302);

Robert M. O'Connor, Chevrolet General Sales Manager (GM 147-148, 223-224, 654, 656, 720-725, 795-801; and pp. 103, 249, 250, 258-259, 260-262);

Oldsmobile Regional Manager who communicated with Chuck Church during 1966 (GM 155; and p. 262);

Zone Manager or other Zone official who spoke with Moe Cerota (p. 138);

J. J. Owens, Director, Fleet Section, Detroit (GM 142-146);

the Pontiac Eastern Regional Manager for Pontiac dealership in Newburg, NY (GM 798-801; and pp. 258, 260);

Officials of Pontiac Fleet Sales Dept, Pontiac, Michigan (GM 131, 172-173, 203-204);

Officials of Pontiac Sales Division, Central Office (GM 100, 102, 122-124);

Officials of Pontiac Zone, Bala Cynwyd, Pa. (GM 161-164, 172-173);

Officials of Pontiac Zone for Kollmar Pontiac who communicated with Kollmar about Kollmar's letter(s) to Nabcor (pp. 159-160);

Official of Pontiac who met with Robert Dillon of Ruckle Pontiac at Dillon's home on a weekend in January 1967, approximately (p. 86);

Aloysius F. Power, Esq., GM General Counsel (GM 223-224, 654-657; and pp. 259, 261-262);

Mr. H. C. Pratt, Director, Marketing Organization, Pontiac Motor Division, Pontiac, Michigan (GM 796-798; and p. 260);

Mr. A. K. Pringle, Dayton Regional Manager of T.E.F. (GM 232-238, 252, 278-280, 289-290, 310, 804-805);

G. P. Prodromos, Fleet Manager, Philadelphia Pontiac Zone (GM 170-171);

H. R., person with such initials, GMAC, approved financing (GM 291, 302);

Robert W. Redmond, Service & Parts Manager, Buffalo Pontiac Zone, Williamsville NY (GM 105-106, 108-114, 116-117, 122-127, 133-136; and pp. 93-94);

Each official of GM who spoke with Fred Rice (GM 789-795);

Mr. L. D. Robbins, Manager, Buick Owner Relations, Flint, Michigan (GM 212-222);

James M. Roche, GM President and Chairman (GM 147, 654-657, 685, 749-753, 756-757; and pp. 32, 60, 74, 76, 80, 104-105, 244, 252, 257-258, 259, 261, 269, 276, 280-304);

W. C. Roebuck, office of Resident Comptroller, Norwood Plant, Chevrolet Division, Norwood, Ohio (N 5913);

Sidney Rosdeitcher, Esq. (pp. 61-64);

Mr. C. C. Rule, Customer Service Dept., Oldsmobile Division, Lansing, Michigan (N 6393-6396; and pp. 41-42);

D. J. Rutelin, probably Pontiac Motor Division (GM 222; and p. 272);

D. S., person with such initials, co-worker or secretary of Walter K. Englert, Midtown Chevrolet Division (GM 337);

Roy L. Sanders, Representative, Buffalo Pontiac Zone (GM 108-113, 116-117);

Herman P. Sattler, GM Marketing Staff, Detroit (GM 668, 677-678, 685-687, 690, 741-742, 754; and pp. 76, 81-82, 101, 239-241, 244, 251, 252);

Mr. C. Scherny, Special Accounts, GMAC? (GM 281);

Mr. Schmidtdale, representative of the Philadelphia Chevrolet Zone (p. 156, 196);

Jack E. Simmers, Office Manager & Car Distributor, Philadelphia Pontiac Zone, 3/19/70 (GM 177-179);

James Small, Director of the Philadelphia Regional Office of the Fleet Section 1968-9 (p. 214);

E. J. Smith, Dayton Branch, GMAC (GM 289, 804-805);

F. Smith, Accountant, Pontiac Motor Division, Pontiac, Michigan (GM 207);

David Spence, Fleet Representative, Philadelphia Chevrolet Zone (GM 679; N 20005; and pp. 23, 66-67, 76, 77-78, 82, 114, 238-239, 245);

Joe Sufton, Philadelphia Pontiac Zone (GM 809);

Paul E. Svoboda (GM 148, 796-797);

Thomas L. Swope, Organization Manager, Buffalo Chevrolet Zone (GM 341, 344);

TEF, Detroit, Michigan, official who spoke with GMAC's Loving (GM 346, 824; and p. 254);

J. C. Thede, Esq., GM Legal Staff (GM 276-280, 289-290, 804-805);

Henry ("Hank") G. Thomas, Philadelphia Branch, GMAC (GM 764, 775, 783; N 20023; and pp. 67, 193, 253, 255);

Tom, a co-worker with Walter K. Englert, Midtown Chevrolet Division (GM 337);

F. Vade, probably GMAC, in 1972 (GM 804-805);

Vivian, secretary to Sidney G. Gilliatt, GM Sales Section, Detroit (GM 788-794; and p. 266);

A. G. W., person with such initials, GMAC, Dykstra phoned (GM 291);

Joseph G. Whckerman, Esq., GM Legal Staff, New York (GM 701; and pp. 245, 263);

Mr. J. S. Walker, probably Pontiac Motor Division, Pontiac, Michigan (GM 221-222; and p. 272);

T. P. Wallace, Resident Comptroller, Flint, Michigan (GM 339);

J. P. Ware, Manager, Philadelphia Pontiac Zone (GM 172-177, 182-187, 203-204, 219, 222; and pp. 271-272);

Fred Watkins, interim branch manager of Midtown Chevrolet Division (GM 758-762; and pp. 33-34);

John Weber, Accounting Dept., Pontiac, Michigan (GM 126-127);

Robert Weinbaum, Esq., formerly with Justice Department and now employed by GM (possibly in California) (pp. 183, 192; N 20104);

Mr. P. J. Wetzel, GM Public Relations Staff, NY (GM 148, 654-657, 796-797; and pp. 257, 260, 261);

Mr. A. L. Williams, 1967-8 Director of GM and First National City Bank (p. 119);

Pete Williamson, Staff Assistant to GM Chairman, 2/68 and after;

Kenneth C. Womack, Manager, Buffalo Chevrolet Zone (GM 339-340, 680-684, 726-727; and pp. 23, 29, 75-76, 81, 101, 103, 116, 125, 128, 131, 140-142, 163, 182, 241-243, 248);

Mack Worden, Vice President of Marketing, a GM officer, to whom Conlin reported (p. 211);

Miriam Yost (initials M. Y.), Karney's secretary, GM Fleet Section; New York Regional Office (GM 142-146, 150-153, 702-703; and pp. 243-244, 249, 251, 256-257, 262-263);

George J. Zibold, Jr., Single Car Deliveries, Foreign Distributors Division of GM, New York, NY (pp. 72-74);

Brother-in-Law of George J. Zibold, Jr., a salesman for Midtown Cadillac Division, New York, N.Y. (pp. 72-74);

Superior of George J. Zibold, Jr., who Zibold introduced to Frank Maiorana (p. 73);

Superior of George J. Zibold, Jr., with whom Zibold communicated about possiblity of Zibold testimony on behalf of Nabcor during evidentiary hearing on plaintiffs' motion for a preliminary injunction during March-April, 1973;

Person from Zibold's office who had lunch with Frank Maiorana and Zibold (p. 73);

M. F. Zimmerman, Comptroller's Office, Chevrolet Division (N 5913); and

each Zone Manager, Assistant Zone Manager, District Manager and othe Zone employee or official having any responsibility for or communications of any kind with any of the franchised dealers of GM listed on pp. 4-10 (¶¶ 8-88) of plaintiffs' Pretrial Brief dated January 26, 1976.

2. Identify each officer and director of GM, GMAC and Motors Holding Corporation who communicated about any of the plaintiffs with

(a) any officers, directors or employees of GM, GMAC, Motors Holding Corporation or any subsidiaries thereof;

(b) any franchised dealers of GM, Ford Motor Company, Chrysler Corporation or American Motors Corporation; and

(c) any other persons (including but not limited to any of the plain tiffs).

3. Identify each person you intend to call as a witness (other than solely as an expert witness) to attempt to disprove the alleged liabilit of any named defendant or complicity of any named defendant or alleged co-conspirator under

(a) the Sherman Act; and/or

(b) the Robinson-Patman Act.

4. Identify each officer of GM and any subsidiaries having any responsibility for

(a) marketing of new cars in the United States on a fleet basis;

(b) marketing of new cars in the United States on a non-fleet basis;

(c) compliance with the injunction in the California Discount Case (entered on or about August 18, 1966);

(d) franchised new-cars dealers of GM;

(e) financing of franchised new-car dealers of GM;

(f) financing of customers of franchised new-car dealers of GM;

(g) establishment of new-car destination charge policy of GM; and

(h) establishment of new-car warranty policy of GM.

5. Identify each of the franchised dealers listed on pp. 4-10 (¶¶ 8-88) of plaintiffs' Pretrial Brief dated January 26, 1976, which, at any time, were financed in whole or in part by you, Motors Holding Corporation or any other subsidiary (not including floor-plan financing), and as to each such franchised dealer:

(a) describe the terms of the financing;

(b) state the amount of the financing;

(c) state the amount remaining unpaid as of December 31st of each year and as of May 31, 1976;

(d) identify each of the directors for each dealer; and

(e) identify each director employed, appointed or controlled by GM, Motors Holding Corporation or any other subsidiary of GM or Motors Holding Corporation.

6. State the substance of each communication concerning any of the plaintiffs by or with each person identified in your answers to Interrogatories No. 1, 2, 3, 4 and 5(e) above.

7. As to each person identified by you in answer to Interrogatories No. 1, 2, 3, 4 and 5(e) above,

(a) identify each division or subsidiary of GM, GMAC or Motors Holding Corporation for which he was employed;

(b) state each title, position and office he held;

(c) identify the period during which he held each such title, position and office; and

(d) identify each immediate superior and his title, position and office and the period during which he was the immediate superior.

8. As to each person identified in your answer to Interrogatory No. 3 above, describe briefly the anticipated testimony in a manner similar to the description of anticipated testimony given by plaintiffs in their Pretrial Brief dated January 26, 1976.

INTERROGATORIES 9-14
TO BE ANSWERED BY: BAIN CHEVROLET
BART BUICK
CAMPBELL CHEVROLET
HAMISTER-GILLOGLY CHEVROLET
PARAGON OLDSMOBILE
NFADA

9. Identify each of the following persons:

A. TO BE ANSWERED ONLY BY BAIN CHEVROLET (pp. 22, 124-128, 182, 294, 303-4)

Marc __________, Clerk;

Richard Arnold, Assistant Manager (pp. 22, 125, 127);

Robert S. Bain, President (pp. 22, 124-128);

Barbara Fischer, Secretary-Treasurer;

P. Fisher, New-Car Manager;

Edward Humes, Service Manager;

Robert Locklear, Used-Car Manager;

John Reno, Salesman;

W. A. Richardson, Assistant Manager;

LeRoy Schweinsburg, Secretary-Treasurer;

Chuck Sciandia, Used-Car Manager;

the secretary present at meeting (p. 125);

Edward Simmons, Sales Manager (p. 124);

Tony Vona, Used-Car Manager;

Dean Weaver, Secretary-Treasurer;

Ray Wesolowski, Parts Manager (p. 127); and

any other officer, director or employee of Bain Chevrolet who communicated with any persons about any of the plaintiffs.

B. TO BE ANSWERED ONLY BY BATT BUICK
(pp. 30, 116-117, 119, 132-133)

Paul V. Batt, President (pp. 30, 116-117);

J. S. Collins, Sales Manager (pp. 116-117, 119); and

any other officer, director or employee of Batt Buick who communicated with any persons about any of the plaintiffs.

C. TO BE ANSWERED ONLY BY CAMPBELL CHEVROLET
(pp. 135-136, 139-140)

Tony Piere, Sales Manager (p. 136);

each other officer, director or employee of Campbell Chevrolet who communicated with any persons about any of the plaintiffs.

D. TO BE ANSWERED ONLY BY HAMISTER (CLEMENTS)-GILLOGLY CHEVRO (pp. 29, 74-75, 81, 11[illegible]26, 136, 139-140, 149, 243)

Mr. Clements;

Mr. Gillogly;

Oliver C. Hamister, Vice President and principal (pp. 29, 74-75);

Richard G. Holstead, Manager (pp. 29, 74-75);

Jim O'Donnell, Salesman;

Elmer Smith, Office Manager; and

each other officer, director and employee of Hamister-Gillogly Chevrolet who communicated with any persons about any of the plaintiffs.

E. TO BE ANSWERED ONLY BY PARAGON OLDSMOBILE (pp. 173-174)

Victor Goldsmith, President (p. 174);

Francis X. O'Brien, General Manager (pp. 173-174);

Glenn Taylor, Manager; and

each other officer, director and employee of Paragon Oldsmobile who communicated with any persons about any of the plaintiffs.

F. TO BE ANSWERED ONLY BY THE NFADA (pp. 39, 81, 135, 157, 163-164, 180, 182, 196-197, 241-243, 248)

(previously answered; accordingly no persons are to be identified by NFADA under this Interrogatory No. 9F.

10. Identify each person you intend to call as a witness (other than solely as an expert witness) to attempt to disprove the alleged liability of any named defendant or complicity of any named defendant or alleged co-conspirator under the Sherman Act.

11. State the substance of each communication concerning any of the plaintiffs by or with each person identified by you in answer to Interrogatories No. 9 and 10 above.

12. As to each person identified by you in answer to Interrogatories No. 9 and 10 above,

(a) state each title, position and office he held;

(b) identify the period during which he held each such title, position and office; and

(c) identify each immediate superior and his title, position and office and the period during which he was the immediate superior.

13. As to each person identified by you in your answer to Interrogatory No. 10 above, describe briefly the anticipated testimony in a manner similar to the description of anticipated testimony given by plaintiffs in their Pretrial Brief dated January 26, 1976.

14. (NOT TO BE ANSWERED BY NFADA) Answer Interrogatory No. 5 to the extent that it applies to you.

INTERROGATORY NO. 15
TO BE ANSWERED ONLY BY NFADA

15. Identify each communication about any of the plaintiffs by any officer, director or employee of your or at any meeting of your members, except to the extent previously disclosed in your answers to plaintiffs' interrogatories, dated August 29, 1974.

Dated: New York, New York
June 2, 1976

Carl E. Person

Carl E. Person
Attorney for Plaintiffs
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

jprf

as to which you would then determine whether the hearsay rule was admissible and have a hearing outside of the --

THE COURT: We may not be talking about different things.

MR. PERSON: Do it after I put on my question. Putting my case on twice would be a financial burden that would be --

THE COURT: That is the question.

MR. PERSON: We need to rely on subpoenaes and things, we need to put on our case so you could then rule. I don't object to that.

THE COURT: Mr. Person, let me just think out loud. I don't have in my mind at this point any kind of listing of what this direct evidence would be against General Motors. But I think a lot of it relates to the five or so instances we talked about.

The testimony about statements by, is it Mr. English?

MR. KLEINBARD: Mr. Belcher, Mr. English would certainly be two people.

THE COURT: If my memory is correct, there would be a fairly limited amount of proof put on by you as to statements made by General Motors employees.

We have got Arnold and Bolling so far. Where do we go from here?

MR. PERSON: Crowly is a question of whether the service manager wanted Crowly to have the name of NABCOR taken off the warranty before the warranty would be on there.

THE COURT: Is Crowly going to testify as to any act or statement of General Motors?

MR. KLEINBARD: It seems to me he falls into the category on 2.

THE COURT: You mean the second type?

MR. KLEINBARD: Incidentally --

THE COURT: The general practice thing?

MR. KLEINBARD: The general practices.

THE COURT: Let's pass Crowly.

Duplis.

MR. PERSON: That was a GM employee and we can skip over that.

THE COURT: All right.

Donner, we will skip for a moment.

Englert.

MR . PERSON: We can skip for the moment.

GMAC and GM. We can skip Gordon.

THE COURT: There is another Gordon.

MR. PERSON: Peter Gordon said that at the board of directors it was --

THE COURT: What board?

MR. PERSON: Of the New York Automobile Dealers Association.

THE COURT: How does that involve direct evidence against General Motors?

MR. PERSON: Well, that Cadillac is a member of the board. Cadillac is a member of that ADA.

THE COURT: NADA?

MR. KLEINBARD: NADA is the national.

MR. PERSON: Of the New York ADA.

THE COURT: What evidence would Peter Gordon present that would be nonhearsay testimony against General Motors.

MR. PERSON: That the Cadillac Division of GM at Broadway and 57th Street was represented on the New York Automobile Dealers Association board of directors.

THE COURT: So?

MR. PERSON: Well, it was the board of directors which had the meeting in which they referred the matter of NABCOR to the NADA recommending that --

THE COURT: Then what happened?

MR. KLEINBARD: No showing even that that member was present. The fact that Cadillac had a member --

THE COURT: We are talking about direct evidence. Is there a statement that a Cadillac representative made at a meeting which Mr. Gordon can testify about?

MR. PERSON: No.

THE COURT: Let's pass Peter Gordon. We may have to go back but at least this cuts out pages of this.

MR. PERSON: The riding title of Mildred Hart Sough.

THE COURT: This is activity by a dealer, isn't it?

MR. KLEINBARD: This is concerning Cadillac.

THE COURT: I want to be very strict here. I am talking about testimony, direct testimony of actions or statements by General Motors. I don't think we have anything -- we don't have to name everybody in all these pages.

It goes on for another 80 pages or so.

MR. PERSON: We can skip in terms of NABCOR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421A (TPG)

-against- :

GENERAL MOTORS CORPORATION, et al., : AFFIDAVIT

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARTIN KLEINBARD, being duly sworn, says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys in this action for defendants General Motors Corporation ("GM"), General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche. I make this affidavit in support of GM's motion to modify a subpoena duces tecum served on GM on behalf of the plaintiffs. This motion seeks to have substantially all of the specifications of the subpoena stricken. (A copy of the subpoena is annexed hereto as Exhibit 1.)

Preliminary Statement

2. The subpoena served by plaintiffs seeks the production of an enormous volume of documents, ostensibly for the evidentiary hearing scheduled to being on or shortly after September 8, 1976. Yet the most cursory review of the subpoena specifications reveals the following:

a) Virtually none of the materials subpoenaed has anything whatever to do with the issue to be tried at the evidentiary hearing -- i.e., whether the plaintiffs can establish by a fair preponderance of non-hearsay evidence that GM participated in the conspiracy alleged in the complaint. As the Court has recognized, the scheduled hearing has substantially nothing to do with the general structure of the automobile industry, which is the primary focus of this subpoena.

b) The subpoena is a wholly improper attempt to circumvent prior rulings of this Court and to obtain pretrial discovery under the guise of compelling production of evidence for trial. In fact, the subpoena is little more than a revised draft of the interrogatories served by plaintiffs in July 1974, which were stricken by this Court in their entirety.

c) The subpoena wa served on August 30, 1976 and made returnable on September 8, 1976, although plaintiffs have been on notice of the scheduled evidentiary hearing since August 4 and on notice of the September 27 trial date since May 28, 1976. To require GM, at this late date, to undertake the great effort which compliance with this subpoena would entail would unfairly interfere with its trial preparation. It would fall squarely within the terms of Rule 45(b) -- be "unreasonable and oppressive" -- and therefore should not be permitted.

3. Rule 45 requires that a motion to quash or modify a subpoena be made on or prior to the return date of the subpoena. Since this subpoena is returnable on September 8, and we have been informed that Judge Griesa will be unavailable until after Labor Day, we make this motion on papers but include only the briefest outline of our objections to the subpoena in the anticipation that the matter will be handled orally in conformity with Judge Griesa's customary practice.

The Materials Sought are Irrelevant to the Evidentiary Hearing

4. The paramount reason for modifying this subpoena is that none of the materials sought has anything whatever to do with whether GM was a party to any conspiracy directed at Nabcor or the other plaintiffs -- the limited issue to be tried by the Court before the commencement of a plenary trial.* Indeed, it is hard to see why plaintiffs need to serve any trial subpoena for this hearing, as clearly relevant documents -- those referring to the plaintiffs -- were produced long ago pursuant to the Court's direction. This subpoena is but another manifestation of plaintiffs' determination to magnify this case out of all proportion and to avoid the merits of the conspiracy claim at all costs.

5. A chief exemplar of plaintiffs' blunderbuss approach is their demand for documents from January 1, 1960 to the present. It is perfectly apparent that pre-1966 documents can have nothing whatever to do with the plaintiffs, none of which existed until 1966, and that post-1970 documents, even if related to the plaintiffs, can have nothing to do with this case in view of the Court's ruling that the cut-off date is December 10, 1970. (Minutes, Dec. 13, 1974, at 41-42)

6. Passing the time period, the subpoena seeks an enormous variety of documents concerning in greater or lesser degree the organization and structure of the automobile industry. For example, it seeks:

---

* We do not object to producing copies of the final judgment in United States v. General Motors Corp. and certain related correspondence to Chevrolet dealers and personnel not because they are relevant to the merits, but because we intend to offer them on the issue of the scope of authority of Chevrolet personnel in connection with evidence we expect plaintiffs to offer. The documents will show that GM instructed Chevrolet personnel not to discuss "any activity . . . involving the sale of Chevrolet motor vehicles to or through discount houses, referral services or any other . . . class of persons engaged in selling or offering automobiles for sale . . . . " with Chevrolet dealers, and that it similarly requested Chevrolet dealers not to discuss such matters with Chevrolet personnel. Accordingly, we will take the position that any alleged conversations concerning plaintiffs between Chevrolet employees and Chevrolet dealers exceeded the scope of the employees' employment and therefore are not admissible against GM.

a) Documents reflecting "what a delivering dealer does to prepare a car for delivery to the customer . . . and . . . why GM does not prepare the cars itself . . . " (Specification ["Spec."] 19)

b) Documents "analyzing the competitive factors in the industry of financing customer purchases of new cars from 1960-70 . . . " (Spec. 21)

c) Each "form of fleet agreement used by GM from 1940 to discontinuance of use of the fleet agreement", which we understand was in 1947. (Spec. 4)

d) "Each analysis, study or report . . . relating to the market for fleet users, rental, or leasing companies . . . " (Spec. 26)

7. At the pretrial conference on August 4, 1976, this Court recognized that there is a vast difference between evidence tending to show that GM participated in a conspiracy designed to drive Nabcor out of business and evidence of general automobile industry practices. The Court stated:

> "What I am trying to distinguish is evidence that really, evidence of General Motors' conduct directed at NABCOR versus the host of general practices which may have adversely affected NABCOR and you may claim were illegal but they don't establish a conspiracy between General Motors and the dealers of the kind we are talking about." (Minutes, Aug. 4, 1976, at 30)

8. Evidence of GM's conduct toward Nabcor is what this preliminary hearing is all about. The hearing is designed to afford plaintiffs an opportunity to prove their allegation that GM participated in a conspiracy directed at them, as alleged in the complaint. But this subpoena calls exclusively for materials falling in the latter category -- materials relating to general industry practices. As the Court has recognized, it has nothing to do with the scheduled preliminary hearing.

9. It also should be borne in mind that plaintiffs have no need of these materials for the preliminary hearing. Pursuant to the Court's direction, GM conducted an extensive file search designed to locate documents referring to Nabcor or any of the other plaintiffs and produced the documents located by that search.* Thus plaintiffs should have all of the documents referring to them, and hence any documents tending to show the existence of a conspiracy directed at them.

10. Even if there were some small part of this subpoena which sought materials relevant to the preliminary hearing, neither the Court nor GM should be put to the burden of wading through this burdensome subpoena in order to separate the wheat from the chaff. As is demonstrated below, this subpoena was not even a good faith effort by plaintiffs to seek relevant materials, as it repeats large numbers of discovery requests previously overruled by the Court and is an improper attempt to use the trial subpoena as a pretrial discovery device.

The Subpoena is an Improper Attempt to Circumvent Prior Rulings and to Obtain Pretrial Discovery

11. In large measure, this subpoena is a thinly disguised attempt to reinstate large portions of plaintiffs interrogatories, dated July 19, 1974, which were stricken in their entirety by the Court on the ground that the vast bulk of the interrogatories related to general industry practices which have nothing to do with this action.** (Minutes, Dec. 6, 1974, at 3-4) Beyond that, it also seeks to reinstate document discovery requests made on April 18, 1974, which the Court also refused to entertain.

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* Other than privileged documents.

** The interrogatories sought production of the documents referred to therein.

12. Attached as Exhibit 2 is a chart showing the overlap between the specifications of this subpoena and specific discovery requests previously stricken by this Court.

13. On April 19, 1974, the Court commented on plaintiffs' document request as follows:

> "The thing that discourages me, Mr. Person, I am just flabbergasted with this proposal and I don't think anybody, including you, wants to spend the next decade on this case. And I don't think it is necessary." (Minutes, Apr. 19, 1974, at 67)

14. And on December 6, 1974, in striking plaintiffs' interrogatories, the Court said:

> "I think that it is a basic waste of time to have the Court go through these interrogatories and the objections piece by piece.
>
> "The interrogatories are so broad, so far beyond the limited issues of this case that what I am going to do is to rule in this fashion:
>
> "No further answers to the plaintiff's interrogatories beyond what may have already been furnished are required of any defendant.
>
> "If and when, at a later point in the discovery, the plaintiff submits to me in advance limited interrogatories addressed to specific parties and if I approve them in advance, they can be answered. But the general scope and character of the interrogatories is so defective that it seems to me an imposition on the Court to have served them and it is simply not appropriate to try to take them one by one.
>
> "I don't think the plaintiffs hae drafted their interrogatories in such a way as to really merit that kind of treatment.
>
> * * *
>
> "I am saying that there may be here and there some part of an interrogatory or maybe some whole interrogatory which might be relevant, but those questions are so few and far between and so burried in masses of irrelevant material that it seems to me that it is incumbent upon you to redraft your interrogatories and not incumbent upon the Court to go through piece by piece and try to ferret out the relevant from the mass of irrelevance." (Minutes, Dec. 6, 1974, at 3-4)

15. This subpoena -- which is little more than a marked-up version of those prior discovery demands -- warrants the same treatment.

16. Both the extraordinary breadth of this subpoena and its close correspondence with plaintiffs' previously stricken discovery requests demonstrates beyond serious doubt that this subpoena is an effort to achieve two objectives. First, plaintiffs here seek to get around this Court's prior discovery rulings. Second, plaintiffs here attempt to obtain far reaching pretrial discovery on the eve of trial after almost 6 years of pretrial proceedings.

17. While there has been controversy as to whether a trial subpoena can reach the breadth of materials available under the Rule 34 in pretrial discovery, as opposed to specific pieces of evidence needed for trial, that issue is not even presented here. The Court's power under Rule 45 permits it to quash even a subpoena calling for clearly relevant materials where production would be "unreasonable and oppressive" in the circumstances. In this case, plaintiffs have had almost six years to conduct pretrial discovery. They have obtained production of thousands of documents. They have conducted the depositions of 44 witnesses. In short, they have had an incomparable opportunity to prepare for trial. In these circumstances, they should not be permitted to subject defendants to the burden of what in reality is a sweeping new discovery program in the guise of a subpoena duces tecum for an evidentiary hearing on a limited issue. To do so would be "unreasonable and oppressive".

In Any Event, Plaintiffs Should Advance the Costs of Complying with This Subpoena

18. Even the most cursory reading of the specifications to this subpoena reveal that compliance would entail a great expenditure of time and money. Large quantities of documents are sought on a great variety of subjects, generally for a 16 year period and in some instances for periods as long as 26 years. (Spec. 4)

19. Rule 45 permits the Court to require the plaintiffs to advance the costs of complying with their subpoena. Given the circumstances, this is an appropriate case for doing so. Accordingly, in the event the Court requires compliance, we request the Court to require plaintiffs to advance $5,000 before compliance efforts are begun and such additional sums as the Court may require in the event the cost of compliance exceeds $5,000.

20. Any notion that these plaintiffs are impecuneous and should not be forced to bear these costs should be rejected out of hand in light of plaintiffs' demonstrated imagination in devising new ways to finance this lawsuit-turned-crusade. For example, plaintiffs' counsel recently was the subject of an article in Time concerning his innovative plans for selling shares in any recovery the plaintiffs may obtain in this case. (A copy of the article is annexed as Exhibit 3.)

The Need For an Order to Show Cause

21. This motion is brought on by order to show cause because Rule 45 of the Federal Practice of Civil Procedure requires that motions to quash or limit subpoenas be made on or

before the return dates thereof. This subpoena was served on August 30, 1976 and is returnable as early as September 8, 1976. Accordingly, there is insufficient time to bring on this motion by notice of motion. Plaintiffs' counsel today refused to agree to a stay of compliance pending the determination of a motion to quash or modify this subpoena brought on before Judge Griesa in the ordinary course.

22. No prior application for the relief sought herein has been made.

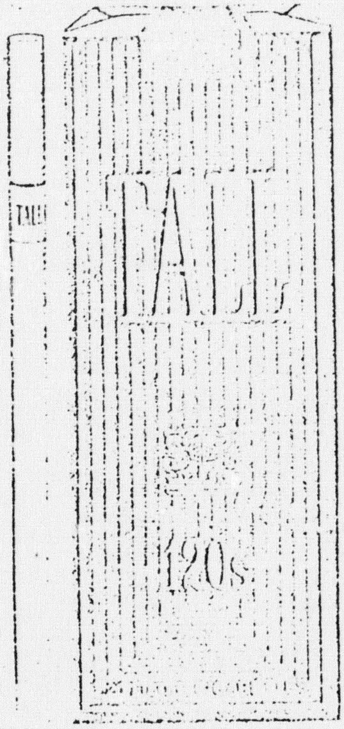
Martin Kleinbard
Martin Kleinbard

Sworn to before me this
1st day of September, 1976

Notary Public

[illegible]
Notary Public, State of New York
No. [illegible]
Qualified in [illegible]
Commission Expires [illegible] 78

TALL
120s
Towers over ordinary cigarettes



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issue. Jack Landau, the main force behind the reporters' free-press committee, hopes for what he would consider a good compromise. "Before a judge could enter a restrictive order, he should be made to hold a hearing to explore all other possibilities [such as a change of venue]. At this hearing, not only the defense and prosecution but also the press could be heard on a proposed gag rule." Some answer with guidelines obviously is needed. Currently the third most litigated free-speech issue—after obscenity and libel—is the question of gag rules.

Suits for Sale

"Can I show you something in a suit, sir?" the investment counselor might say unctuously. "A lawsuit I mean. A really blue-chip group of defendants and prospects for an impressive award of damages." Buying shares in a lawsuit? Why not, asks Manhattan Attorney Carl E. Person, who has reason to believe that he is on his way to creating just such an investment possibility.

Person is currently representing a small group of auto brokers in a complex, $300 million antitrust suit against the big four automakers, many of their New York franchise owners, and some of the New York newspapers they advertise in. To help him match the resources available to such weighty opposition, Person asked a federal judge to authorize two approaches guaranteed to horrify the bar: 1) the hiring of expert witnesses on a contingency basis under which they would be paid only if Person's clients won, and 2) allowing Person's clients to sell shares in the outcome of the suit to finance the costs (estimated at $1 million) of the action, which is already 5½ years old. While Federal Judge John F. Dooling Jr. did not rule directly on Person's claim, he has issued an opinion strongly implying that the lawyer has a point.

New Market. The bar's traditional ban on contingent fees for witnesses rests on the fear that they would hype their testimony—or worse—to increase the likelihood of victory and thus of getting paid. But Judge Dooling thinks the danger of distorted testimony is not significantly greater than in cases in which a witness is paid a straight fee for his presumably favorable expertise. As for the remarkable idea of selling shares in the ultimate damages, if any, the judge said that the law did not appear to prevent Person's plaintiffs from selling such shares, so long as investors had no say in how the case was fought legally.

Person had already become something of a bar rattler as one of a handful of attorneys who pressed legal claims that helped force the American Bar Association to reconsider its ban on lawyer advertising. Now, armed with the Dooling ruling, Person has asked the New York City bar about the ethics of his share sale, and is talking about a whole new stock market for lawsuits.

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120s
All those extra puffs.
Costs no more than 100's.

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Comparison of Subpoena Specifications With Plaintiffs' Interrogatories, dated July 19, 1974, and Notice to Produce, dated April 18, 1974

Subpoena Spec. No.	Substantially the Same as or Included Within Interrogatory No.	Substantially the Same as or Included Within Document Request No.
1	--	10, 6, 35
2	74	--
3	--	68
4	--	--
5	75(b), (c)	--
6	80, 55, 74, 53	58
7	95	8, 42
8	29, 31, 32, 34, 37	69
9	--	--
10	62	--
11	93	9
12	--	--
13	61	--
14	86	--
15	85	50
16	21-28	24-25
17-18	--	38
19	--	--
20	93	9, 41
21	--	--
22	*	*
23	*	*
24	*	*
25	--	68
26	102	55, 61, 63

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* These specifications request documents which have been produced previously or which are in the public domain. In view of F.R.Ev. 1003, re-production is patently unnecessary.

CIVIL SUBPOENA

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

TO GENERAL MOTORS CORPORATION
767 Fifth Avenue
New York, N.Y. 10022

CASE NO. 70 Civ. 5421A

JUDGE'S INITIALS TPG

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Southern District of New York, at the courthouse, Foley Square in the City of New York, in said District, at an evidentiary hearing to commence on or after ~~xxxxxxxxxxxxx~~ the 8th day of September, A.D. 1976, at 10:00 o'clock A.M. of said day (and bring with you each of the documents described in the Schedule annexed hereto,

then and there to testify on behalf of the Plaintiffs

in a suit pending in said Court wherein National Auto Brokers Corp., et al. are ~~is~~ Plaintiff and General Motors Corporation, et al. are ~~is~~ Defendants.

August 30, 1976.

RAYMOND F. BURGHARDT, *Clerk.*

By M. C. Berran
M. C. BERRAN, *Deputy Clerk.*

Carl E. Person, 132 Nassau St. NY NY 349-4616
Attorney for Plaintiffs

Julien & Schlesinger, P.C., 2 Lafayette St.
NY NY 962-8020
~~Address~~ Attorney for Plaintiffs

SCHEDULE

to

CIVIL SUBPOENA dated August 30, 1976

issued to GENERAL MOTORS CORPORATION

in

NATIONAL AUTO BROKERS CORP., et al. v. GENERAL MOTORS CORPORATION, et al.

Instructions: Unless stated otherwise, the relevant time period shall be January 1, 1960 to the present.

Please bring with you each of the following documents:

1. GM franchise or sales agreement and complete GM dealer file (including any documents relating to dealer financings by the Motors Holding Division) as to each GM franchisee identified as a co-conspirator at pp. 4-10 of plaintiffs' 306-page Pretrial Brief dated January 26, 1976 (the "Pretrial Brief") covering 1966 to the present;

2. Copy of each warranty agreement covering all domestic cars manufactured by GM as to model years 1960 to 1977;

3. Each set of instructions to GM personnel relating to issuance or approval of fleet certificates or fleet agreements in use at any time prior to 11/72;

4. Copy of each form of fleet agreement used by GM from 1940 to discontinuance of use of the fleet agreement;

5. Each document stating GM's policy concerning each material change in any GM new-car warranty from 1960 to the present, including but not limited to any added requirements to have warranty work performed by the selling dealer; for payment of a fee by a purchaser other than from a GM dealer for the transfer of a GM new-car warranty; and that application for transfer of warranty be made, if at all, within a certain period of time; the transferee of the GM new-car warranty obtain warranty protection for less than the full period applicable to the original warranty or otherwise receive reduced benefits;

6. Each document stating GM's policy on warranty work as to cars sold to qualified fleet purchasers;

7. Each document stating GM's policy and procedures for evaluation of dealer performance;

8. Each document stating GM policy as to imposition and determination of the amount of destination charges from 1950 to the present;

9. Each document stating the policy of GM and each of its 5 automobile divisions as to the allocation of fleet allotments;

10. Each document reflecting requests for a GM fleet certificate whic was not issued and each document reflecting any actual or purported reasons for t non-issuance;

11. Each document reflecting any GM policy to encourage or suggest tha GM dealers advertise or not advertise new cars outside of their area of sales responsibility;

12. Each document reflecting GM's policy or procedures as to drop shipments of cars to a dealer outside of the selling dealer's area of sales responsibility (1) as to cars sold to qualified fleet purchasers; (2) as to retai customers of the selling dealer; and (3) any other customers of the selling deale

13. Each document reflecting all revocations and non-renewals of GM fleet certificates and the reasons therefor;

14. Each document reflecting any suggestions or threats by GM to terminate or fail to renew any franchise or sales agreement of any of the GM franchisees identified at pp. 4-10 of the Pretrial Brief from 1960 to the present

15. All records relating to warranty claims by any of the GM franchise identified at pp. 4-10 of the Pretrial Brief which were disallowed or questioned by GM and any audit by GM of the warranty claims made by any of such dealers (including the audit and on-premises warranty review and approval activities by GM relating to Bob Bain Chevrolet);

16. Records of GM and GMAC summarizing the dollar amount of business transactions with each of the newspapers, banks and other financial institutions named as defendant or co-conspirator in this action;

17. Copy of each judgment, order or decree permanently enjoining GM, GMAC, Donner or Roche from performing acts which would be in violation of any of the federal antitrust laws, including a copy of the final judgment in U.S. v. General Motors Corp., 384 U.S. 127 (1966), entered on or about August 16, 1966 (the "California Discount Case");

18. All written instructions or procedures issued by GM or GMAC in an attempt to comply with the final judgment in the California Discount Case;

19. Each document reflecting (1) what a delivering dealer does to prepare a car for delivery to the customer at retail or wholesale; (2) GM's reasons for requiring dealers to "prepare" cars for delivery to the purchaser; and (3) why GM does not prepare the cars itself;

20. Each document reflecting GM's policy concerning sales by GM dealers outside of their area of sales responsibility as to (1) sales to qualified fleet purchasers; (2) retail customers; and (3) other types of customers, such as non-franchised resellers of automobiles;

21. All documents analyzing the competitive factors in the industry of financing customer purchases of new cars from 1960-70, including independent finance companies, banks and captive finance companies of the automobile manufacturers;

22. All documents previously produced to plaintiffs;

23. All documents marked as exhibits at depositions conducted in this action;

24. The original of General Motors Exhibit No. 14, "Statement by Frederic G. Donner, Vice President of General Motors in Charge of Financial Staff — The Economics of Assembly Plant Operations as a Factory in the Pricing of New Automobiles", reproduced at pp. 893-907 of Automobile Marketing Practices; hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, U. S. Senate, 84th Congress, 2nd Session, 1956;

25. Each GM National Fleet Account List and List of Fleet Certificate holders or purchaser-parties to any fleet agreements with GM or any GM dealers from 1940 to the present; and

26. Each analysis, study or report made by the Fleet and Government Sales Section of the GM Marketing Staff or predecessor relating to the market for fleet users, rental or leasing companies, and/or competitive factors between the sale and lease of a new car.

RECEIPT

The undersigned hereby acknowledges receipt of $ 22.00 from Carl E. Person, Esq., representing the statutory witness fee and travel allowance upon service of a subpoena duces tecum in the matter NATIONAL AUTO BROKERS CORP. v. GENERAL MOTORS CORP.

Dated: August 30, 1976.

object or whether you are not.

MR. KLEINBARD: Right.

THE COURT: I want to cover the subpoena duces tecum. It seems to me that this is --

MR. KLEINBARD: It's almost all directed to practices rather than to conspiracy, your Honor.

THE COURT: I don't know almost. It seems to me it's all directed to practices. There are so many items in it, maybe I am missing something.

I am going to quash the subpoena and if there is another subpoena that's drafted that comports with the purpose of our hearing, let it be drafted. But I am not going to spend time trying to part out what is at least in general a subpoena that goes beyond the purposes of this hearing.

I get to Item 5. I must tell you I have not determined the summary judgment motion. I have not worked on that because I have just gotten back --

MR. PERSON: We still feel it's important to take the depositions for purposes were all of the cancelled deals. We wrote him a letter about it and said: Are these all? We would like to get an answer to that.

THE COURT: Can you answer it?

MR. PERSON: Very simply, your Honor, they eliminated a great many of the cancelled orders. I am having a lot of trouble. I am now preparing it.

THE COURT: All right.

Item 9.

MR. PERSON: All done.

MR. KLEINBARD: That was just supplied this afternoon, your Honor.

THE COURT: Good.

MR. PERSON: One last point, your Honor --

MR. KLEINBARD: At the end of the seventh year can we get an annulment of the marriage?

MR. PERSON: One last point, your Honor. Remember the communications interrogatory where I merely wanted them to set forth what communications and contacts various people whose names appeared in documents they produced had concerning NABCOR for the purpose of being able to examine them when they are brought on as witnesses or otherwise? Can they produce a description of the communications in order that we are not unprepared? Otherwise we don't have the discovery --

THE COURT: Your statement now is too general.

MR. PERSON: There were one hundred people or so named in the documents produced by GM that had NABCOR's name on them. All I want is to have a description set forth as an answer to an interrogatory about each communication that each of those persons had concerning the plaintiffs.

MR. KLEINBARD: You have been all through this, your Honor.

THE COURT: It's a completely unworkable way to proceed.

At this point you should have covered it by depositions. I wouldn't pretend to remember what I ruled on that. I can make a reasonable assumption that I told you to do it by depositions --

MR. PERSON: You cancelled those depositions. You said there are too many depositions, there has to be some other way. I fashioned a way --

MR. KLEINBARD: You have lifted that. We both have been able to do it.

If I may say so, your Honor, there are over two hundred people listed here. Over one hundred of them have been already identified. They include people like Mr. Rosdeitcher and Mr. Kaplan that he wants to have identified and a red-headed man who had lunched with Mr. Zibold. I don't know where I am going to find that. I won't bother with all of the other wild descriptions I am supposed to get out of the hundred thousand people.

The most important thing is, where he is asking for an oral summary of conversations or communications, your Honor may remember that we went all through this on the interrogatories. Your Honor ruled in response to our requests to strike that we had given them all the documents that related to NABCOR and that for us to have to summarize all of the oral communications that might have taken place was an impossible job.

THE COURT: Has Mr. Person been given the opportunity to take depositions of people at General Motors?

MR.PERSON: Your Honor, you have quashed those notices for deposition because --

THE COURT: Have I quashed every notice of deposition?

MR. PERSON: Not every one. The difficulty is that a lot of the things that are done are done orally. They have no records of any kind to speak of and, therefore, it's only through the oral communications --

THE COURT: Look, Mr. Person. I am perfectly confident of this, that the way to cover the material that you are talking about is through appropriate depositions. You have had an opportunity to take depositions. You have taken depositions. Obviously there was a limit that came in the deposition taking. I didn't set the limit, but depositions went on for an awful long time and I am sure that there have been many, many depositions taken and

I am not now going to go back and require what I have regarded then and what I regard now as a simply impossible way to proceed.

5 MR. PERSON: Donner & Roche --

THE COURT: Donner & Roche are in a special category.

MR. PERSON: They have the documents. We need --

THE COURT: You may get their depositions.

MR. PERSON: We would like to take them, your Honor.

THE COURT: We have already talked about that. All right.

MR. PERSON: Could we take the depositions now?

THE COURT: Please, let's not repeat that. I want to go over the motion for summary judgment as to Donner & Roche. As long as it's been submitted, I think I can get to it and that would I think help. As long as that work has been done, it will help me make a sensible determination as to what is to be done with Donner & Roche, whether they are still to be

# 805

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION, et al.,
Defendants.

70 Civ. 5421A

MEMORANDUM

GRIESA, J.

Defendants Donner and Roche move for summary judgment dismissing the complaint. Plaintiffs cross-move, pursuant to Rule 56(f), for further discovery.

Decision on the Donner and Roche motion is deferred. Plaintiffs' motion for further discovery is granted to the following extent.

Plaintiffs will be permitted to take the depositions of Donner and Roche. Plaintiffs' questioning of these witnesses will be limited to two hours each.

The record indicates the slimmest of grounds for such discovery. Accordingly, the depositions are to be taken with the minimum of inconvenience and expense to both Donner and Roche and to their counsel. Donner and Roche will be permitted to decide whether the depositions are to be taken in New York City, or at some other place convenient to them, such as their residences. If either of the witnesses chooses to travel to New York City, plaintiffs will pay all expenses of travel and lodging. If either of the witnesses chooses to have his deposition at another place, such as his residence, plaintiffs will pay all expenses of travel and lodging of an attorney for the witness to travel to the deposition. Expenses are to be paid in advance to the extent that they can be estimated.

So ordered.

Dated: New York, New York
September 14, 1976

Thomas P. Griesa
THOMAS P. GRIESA
U.S.D.J.

A 2231

PORTIONS OF THE TRANSCRIPT OF THE EVIDENTIARY HEARING ON THE PRELIMINARY QUESTIONS FROM 10/6/76 to 10/20/76

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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NATIONAL AUTO BROKERS CORP.,
et al.,

Plaintiff,

vs. : 70 Civ 5421

GENERAL MOTORS CORPORATION,
et al.,

Defendants.

-----------------------------------x

BEFORE:

HON. THOMAS P. GRIESA,

District Judge

New York, New York
October 6, 1976, 10:10 a.m.

APPEARANCES:

CARL E. PERSON, ESQ.,
Attorney for Plaintiffs

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.,
Attorneys for Defendant General Motors Corporation
BY: MARTIN KLEINBARD, ESQ.,
LEWIS A. KAPLAN, ESQ.,
MOSES SILVERMAN, ESQ., of Counsel

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(Case called.)

MR. PERSON: Ready, your Honor.

MR. KLEINBARD: Defendant ready.

THE COURT: I think it might be helpful to put a brief introductory statement on the record.

I am holding a preliminary hearing without a jury and the background for the preliminary hearing is fully discussed in prior sessions which were on the record. But to summarize, the purpose of the hearing is as follows:

Early this year the plaintiffs submitted to me a lengthy and very thorough summary of the evidence which they intended to introduce in the trial of this case, which was to take place before a jury. It soon appeared that a great deal of the evidence consisted of what is termed hearsay statements by co-conspirators. That is, it was proposed to introduce a great deal of evidence of this kind: The witness would testify that someone such as a General Motors dealer, an independent franchise dealer, nad been told by a General Motors employee that General Motors would not deal with the dealer any more if the dealer sold to NABCOR.

I am making that statement loosely for illustrative purposes. Maybe there is nothing precisely of that nature, but that's the kind of thing, the general type of thing, which was suggested, proposed to be introduced and there were many, many such proposed pieces of testimony.

The effect would be that an important, crucial piece of evidence against General Motors would ge introduced through the out-of-court statement of the dealer, which, as I hasten to say, is not an employee of General Motors, and that raises the age-old problem of what is called hearsay statements by co-conspirators.

The importance of this testimony was such that I felt that it would be unfair to simply have the jury go into this trial and have all of this evidence introduced subject to connection.

As the cases show, such evidence is not admissible against General Motors unless there is some factual basis for finding that General Motors was a member of the conspiracy alleged. The cases have further indicated in this circuit quite clearly that there must be a sufficient quantum of nonhearsay evidence of General Motors membership in the alleged conspiracy before the hearsay declarations of co-conspirators can be admitted against a party in the position of General Motors.

I determined that it would be appropriate to have the preliminary hearing to see whether there was sufficient quantum of nonhearsay evidence against General Motors to justify the admissibility of the hearsay declarations with respect to the alleged conspiracy, and that is what we are doing today.

The question has arisen as to the quantum of nonhearsay evidence which must be adduced and, to put it more accurately, the question has arisen as to what it takes to convince the trial judge in terms of the weight of the evidence or quantum of proof to justify the admission of the hearsay declarations of the co-conspirators, and both parties have briefed this question. They disagree.

The plaintiffs take the position that something called a prima facie showing is sufficient.

The defendants rely on the criminal conspiracy cases, U. S. v. Pojansky, 45 F.2d 123, and United States v. Geaney, 427 F.2d 1116, for the rule that the trial judge must find that the participation in the conspiracy by the defendant against whom the hearsay is offered is shown by a fair preponderance of the nonhearsay, independent evidence.

The plaintiffs assert that those criminal conspiracy cases are not applicable in the present civil action.

I believe that it would be inappropriate to make a final ruling in the abstract now before I have heard the evidence. I want to see the precise position of the evidence when it is all in to determine what my problem is.

I have determined one thing and that is I will hear both sides put on evidence. I am not going to simply limit it to the plaintiffs' witnesses and refuse to hear any rebuttal testimony. We will proceed in that fashion.

One further thing which has been stated several times in the record is this. The issue before me is whether hearsay declarations of alleged co-conspirators are to be admissible with regard to the conspiracy, the alleged conspiracy, to hamper or to destroy NABCOR's business. From the standpoint of fact and logic, this is a very much separate question from other issues raised by the plaintiffs which relate to the alleged illegality of certain general practices of General Motors which are said to have injured NABCOR but are not said to have been specifically directed to NABCOR, either general policy about warranty certificates, about break charges, transportation charges, and other things that existed, existed long before NABCOR came into the picture, exist independently of NABCOR, and they may or may not be illegal, they may or may not give rise to causes of action on behalf of NABCOR, but whatever standing they have or have not in this action, they are separate problems from the allegation of the specific conspiracy to injure or destroy NABCOR. That's what we are talking about this morning.

So I will hear evidence out of the presence of the jury for the purpose I mentioned earlier, on the question of whether there is sufficient independent nonhearsay evidence against General Motors of General Motors' participation in a conspiracy to hinder or destroy NABCOR.

The question is whether there is sufficient quantum of such evidence to justify the admission of the great body of proposed hearsay declarations of alleged co-conspirators.

and interruption.

You exert maximum effort to that end and I will assist you.

MR. PERSON: Thank you, your Honor.

There are several -- the motions by Messrs. Donner and Roche for summary judgement are being renewed or have been renewed, and I would like to say that I believe that the decision on those motions should be reserved.

THE COURT: I received yesterday, or it wasn't yesterday, the day before, the deposition of Mr. Donner and I am not attempting to rule now on those depositions.

I don't want to have those argued before me today. If I get in a position where I am about to rule I will give you notice.

MR. PERSON: I would like the opportunity of renewing the motion, and I don't have the transcript back, the deposition was taken yesterday --

THE COURT: You will have notice of that.

MR. PERSON: You will find out from the testimony from both sides that there seems to be a substantial interweaving of structural relationships and matters that we have before us, and I would like to just renew my objection to not being able to put on the full case that we have concerning the structural aspects.

THE COURT: You have your record on that.

MR. PERSON: In the complaint we alleged in Paragraph 109 a territorial exclusive that the dealers enjoyed, page 24, and I just want to bring to your attention once again that the plaintiffs have always claimed that the territorial exclusive is illegal and one that was created by the structural aspects, and what happened to NABCOR should be considered in the light of that as part of what I have just stated previously about the structural aspects.

THE COURT: That was created before NABCOR came on the scene.

MR. PERSON: That is correct for the most part but not entirely. We haven't had discovery in this area, so I can't put on a full case.

THE COURT: Look, in a general way I am trying to lay down, and I don't pretend to know every factual issue that can conceivably come up. As a general proposition I am distinguishing between alleged efforts that were specifically directed to NABCOR with the intention of injuring or destroying NABCOR. I am distinguishing that kind of alleged activity and purpose from all manner of general rules and regulations, general policies of General Motors, of which I am sure they have dozens, that apply now to their whole business, to their relationships with their dealers, their suppliers, repair shops, what have you, and that would exist and do exist and did exist whether or not NABCOR was in the picture or not.

Let's go on. Obviously if you have evidence of things specifically directed to NABCOR, whatever that is, put it on.

MR. PERSON: Also, I have signature pages of Frank and Anthony Maiorana which are either here or coming up --

THE COURT: Show those to Mr. Kleinbard.

MR. PERSON: I have made a series of statements about the conduct of various depositions and I am making a motion to strike the depositions of the Maiorana for reasons set forth --

THE COURT: Let's not get into that.

MR. PERSON: I wanted to reserve that and to alert you. I am almost done, your Honor.

Also, I would like as a last item to have you consider a renewal, after all the evidence is in, to consider a renewal of the class action motion to NABCOR franchisees.

MR. PERSON: Yes.

THE COURT: Then proceed.

I am sorry. Why don't you get to that.

Mr. Person, I don't want to preclude you from having this thing make sense, but I think we can pretty well stick to what you say is the nonhearsay evidence.

MR. PERSON: Can we incorporate by reference the nonfoundation testimony as a means of giving the relevance to the other so I don't have to put it on at this time? In other words --

THE COURT: I don't think I am going to have a problem with relevance. There is no jury here. We have a limited purpose here. So you let me worry about relevance. Get your nonhearsay evidence in. If I don't understand the significance, then you can give all the background that's necessary.

Q Did you have a meeting at Clements-Gillogly Chevrolet some time during November, 1967?

A Yes.

Q Was this in connection with your activities --

THE COURT: This was when?

THE WITNESS: September, October, '67.

THE COURT: This was at Clements --

THE WITNESS: Hamister Gillogly.

THE COURT: That's where?

THE WITNESS: Union Road in West Seneca, New York.

Q Could you tell me, Mr. Bolling, who was present at this meeting?

A Myself, Gary Kuhaneck, I believe.

THE COURT: Who else?

THE WITNESS: Richard Hallstead.

Q Who was he?

A He was the sales manager of Hamister Gillogly Chevrolet.

Q What position did Mr. Kuhaneck have at that time?

A He was associated wiht me in Multi-Make Auto Sales & Leasing.

Q Did you have any discussions about --

THE COURT: Just a minute. I thought that Multi-Make had --

THE WITNESS: This was prior to the merger.

THE COURT: I thought you said the merger was in late August of 1967?

THE WITNESS: Late August or early September. The first meeting was --

THE COURT: The merger was in late August or early September. You are not sure exactly when?

THE WITNESS: Yes, sir.

THE COURT: But you are saying in any event that this meeting that you are now talking about was before the merger?

THE WITNESS: It came about about the time that Mr. Strimple and myself were in the process of merging. Mr. Kuhaneck was a partner, if you will, in Multi-Make Auto Sales so at the time he was involved in the transactions. There was myself, Gary Kuhaneck, Richard Hallstead, Ollie Hamister.

Q Who was Mr. Ollie Hamister?

A He was the part owner of Hamister Gillogly Chevrolet.

Q Where did this conversation take place?

A In the conference room at Hamister Gollogly Chevrolet.

Q Tell me what was said at that conference?

MR. KAPLAN: I didn't get the last question and answer.

(Record read.)

MR. KAPLAN: It is still hearsay, as far as I understand.

THE COURT: This is the meeting where English is supposed to have joined it?

MR. PERSON: Yes. There were discussions before Mr. English arrived.

THE COURT: The objection is overruled.

Proceed.

A At this time we were in the process of again outlining our form of business and making a proposal to purchase automobiles from Hamister Gillogly Chevrolet.

Q First of all, let me say this: do you recall whether it was General Auto or Multi-Make which was the name under which you were doing business at that time?

A I believe that we used the name General Auto at that time.

Q Was Gary Kuhaneck ever with you in Multi-Make?

A Yes.

Q Did he go over to General?

A For a short period of time.

Q Did you state to the persons at the meeting that you were engaged in selling new cars?

THE COURT: Let's have the testimony in his words.

Q Could you state what you said concerning the type of business that you were engaged in?

A We explained to them that we would like to purchase new Chevrolets.

THE COURT: When you say "we," who did the talking?

THE WITNESS: I did.

THE COURT: What did you say?

THE WITNESS: I explained to them that we were in the process of purchasing new Chevrolets to be sold at retail or leased.

Q Was there any statement by him in response to that?

THE COURT: "Him" meaning?

Q Either Mr. Hamister or Mr. Hallstead at that time.

A It really never got to that because we were interrupted by a visit from Mr. English.

Q Prior to Mr. English's appearance was there any arrangement for the sale of automobiles to the company he represented?

A No. We made no verbal arrangement at that time.

THE COURT: Who is Mr. English?

THE WITNESS: He was the factory representative.

THE COURT: Representative of whom?

THE WITNESS: General Motors.

Q Did you know him at that time?

A Yes, I did.

Q Where did you first know him?

A From periodic visits to the dealership when I was working for Hamister Gillogly Chevrolet.

Q You knew Mr. English at that time?

A Yes.

Q How long before this meeting in question?

A For the period of time that I was employed by Hamister Gillogly Chevrolet, five or six months, I believe.

Q What happened after Mr. English joined the meeting?

A He asked us to explain our procedure and --

MR. KAPLAN: Excuse me, your Honor.

There is as yet no showing that Mr. English was a speaking agent of General Motors or he was acting within the scope of his employment. He was a low-level employee, and as to such a showing we object.

THE COURT: Overruled.

Q Could you describe the activities of Mr. English when you knew him at the other dealership?

A Well, really, to answer the question fairly I could not describe his duties because as a salesman you are not invited to sit on on dealer matters.

Q Did you see him performing any activities?

A Many times.

Q Tell me what you saw him perform?

A I saw him involve himself with a new car sales manager and Mr. Hamister in ordering new cars, placing the orders for new cars.

THE COURT: He was taking orders?

THE WITNESS: Yes.

Q Was he calculating cars in any way?

MR. KAPLAN: Objection.

A I don't know whether he was calculating cars or not.

Q Did you see him requiring a dealer to order any cars?

MR. KAPLAN: Your Honor, that's objectionable.

THE COURT: Don't lead, please.

Q Going back to the meeting at Hamister Gillogly, can you tell me what took place after Mr. English joined the meeting?

A Yes. I was asked by one of the principals or representatives of Hamister Gillogly Chevrolet, I don't remember which one, but they asked to go over the outline of our business as we had previous to his entering the room, and I again started to explain that we were in search of a dealer that we may purchase new automobiles from and that we may sell or lease -- sell at retail or lease.

T4

Q And did he say anything?

A He then said that he was familiar --

THE COURT: Just a minute.

Go ahead, by "he" you mean who?

THE WITNESS: Mr. English.

THE COURT: You started to say what he said.

THE WITNESS: Yes, sir.

THE COURT: What did he say?

THE WITNESS: Mr. English said he was familiar with NABCOR, familiar with Multi-Make Auto Sales and General Auto Sales.

And as far as he was concerned we would not get any new Chevrolets and if he caught any of his dealers, Mr. English's dealers or General Motors dealers, I don't know who he was referring to, he said that they would not get any more new cars.

Q Was there anything --

THE COURT: Will you read that last answer?

(Record read.)

THE WITNESS: That is not exactly what I said. I said that he said that if he caught any of his dealers selling cars to Multi-Make Auto Sales or General Auto Sales & Leasing, he would see that these dealers did not get any more new cars.

THE COURT: Go ahead, Mr. Person.

Q Did he say anything else at that meeting that you can recall?

A The only thing he said to me is that with my experience in the automobile business at this time he thought I would be smarter than to get involved in such a slipshod operation.

Q What was he referring to?

A Nabcor.

Q Did he mention Nabcor?

A He said slipshod operation.

Q Were you able to purchase any cars from Hamister-Gillogly?

A No. As a matter of fact, we were told that we had received our answer to our proposal to purchase new --

THE COURT: Who told you?

THE WITNESS: Ollie Hamister.

THE COURT: When?

THE WITNESS: Right after Mr. English's statement.

THE COURT: While Mr. English was still there?

THE WITNESS: Yes, sir.

THE COURT: What did he say?

THE WITNESS: He said that we had obviously received our answer to our proposal to purchase new automobiles, and at this time he didn't feel we had any more to discuss and we were asked to leave.

THE COURT: All right.

Q What did you do after that?

A We left.

Q Did you have occasion to see Mr. English again after that?

A Yes, I did.

Q Where did this occur?

A In the restaurant in the shopping plaza.

Q About how long after the incident you just described?

A I would say a couple of weeks.

Q Was anyone with you or Mr. English at that time?

A Yes.

Q Who was there?

A Again, Gary Kuhaneck was with me.

Q Anyone with Mr. English?

A Richard Hallstead, Ollie Hamister.

Q A total of five of you at that time?

A Yes.

Q Can you tell me what was said?

THE COURT: Where was this, please?

THE WITNESS: In the restaurant, I believe in the West Seneca Shopping Center, Union Plaza. I am not sure of the name. About two miles east of English.

Q How far from the Hamister-Gillogly Chevrolet place of business?

A Was the restaurant?

Q Yes.

A About two miles, two and a half miles maybe from the dealership.

Q Can you tell me what was said at that meeting?

MR. KAPLAN: Same objection.

THE COURT: Overruled.

Q Anything said by Mr. English at that meeting?

THE COURT: Just give us the whole meeting.

What happened, did you meet by appointment or run into each other or what?

THE WITNESS: We ran into each other.

THE COURT: What happened?

THE WITNESS: We were asked if we were able to purchase any new Chevrolets or other General Motors products.

THE COURT: Who asked you that?

THE WITNESS: Ollie Hamister.

THE COURT: Who replied?

THE WITNESS: I did.

THE COURT: What did you say?

THE WITNESS: No. Mr. English then said, "I told you before and I better not catch any of my dealers selling you cars either."

Q Did you say anything at that time?

A I told him I thought he was joking, had to be joking.

Q Did anything take place that you can recall?

A No.

Q Did you have any occasion to see Mr. English after that?

A Yes, I did.

Q When was the next time?

A I don't remember how long it was. I saw him in a familiar eating spot for employees of Clements-Gillogly Chevrolet.

Q Where?

A An eating place where the employees --

THE COURT: Some other restaurant?

THE WITNESS: Yes, sir.

Q Did you have any conversation with him?

A None to speak of, no.

Q Did you have any subsequent conversations with him?

A None.

Q Are you familiar with a dealership in the Buffalo area known as Paul Batt Buick?

A Yes.

Q Where are they located?

A Lancaster, New York.

THE COURT: Is that near Buffalo?

THE WITNESS: Yes, sir.

Q Did Multi-Make ever have any orders with Paul Batt or place orders with Paul Batt?

A No.

Q Did General Auto?

A Yes.

Q Can you recall the first order?

A The first order?

Q That General placed.

A Yes.

MR. KAPLAN: Your Honor, this is the Dengler

THE COURT: Who told you this?

THE WITNESS: I believe the sales manager and I don't remember his name.

THE COURT: What did he say?

THE WITNESS: Told us that the car was not available to us, it had been repurchased by General Motors and he never even seen anything like that happen before.

Q Did he mention the number of years that he hadn't seen this thing?

A If he did, I don't remember. I could not physically find the car.

THE COURT: Did you look?

THE WITNESS: Yes, sir.

THE COURT: Where did you look?

THE WITNESS: Around the building, in the shop. The car was not there.

THE COURT: All right, go ahead.

MR. PERSON: I am through with him for the foundation testimony.

THE COURT: All right, cross-examine.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Bolling, I think you said on direct examination that General Auto Sales was in the business of leasing?

A Yes, sir.

Q Never leased a car, true?

A I dont believe we did, no.

Q This story which we just heard about Batt Buick, were you asked about Batt Buick on your deposition, is that correct?

A Yes, I was.

Q You testified on direct examination that you learned that the car had arrived at Batt Buick because you saw it being unloaded?

A True.

Q You were asked at your deposition how you found out the car came to Batt Buick?

A True.

Q At your deposition you didn't say anything about seeing it being unloaded?

A True.

Q You said that you heard from Mr. Strimple from the sales manager that the car had come in ?

THE COURT: Try to go a little slower, Mr. Kaplan.

Q Didn't you testify at your deposition that you heard from somebody else that the car came in?

A I don't remember being asked the question at the deposition, Mr. Kaplan.

THE COURT: Let's have the question and answer if there is something that contradicts his direct examination. Let's have the question and answer cited.

MR. KAPLAN: Give me a moment, your Honor.

THE COURT: All right.

Q You mentioned that Mr. Wills was present on this occasion?

A Yes, sir.

Q You asked if Mr. Wills was there at your deposition, true?

A I am not sure, I don't remember.

Q Were you asked at your deposition, page 84:

"Q Was Sheldon Wills there?

"A He could have been. I don't remember."

A Yes, I believe I did.

Q You flew in from Buffalo when, last night?

A Last night.

Q You came down with Mr. Strimple?

A Yes.

Q About 9.30 this morning you were sitting outside the courtroom with Mr. Strimple talking, true?

A True.

Q You came down with him last night?

A Yes, we did.

Q You were deposed on August 23, 1976, true?

A Yes, sir.

Q You discussed the Batt Buick episode with Mr. Strimple since then?

A Yes.

Q Because of your discussion with Mr. Strimple you now remember Mr. Wills was there, true?

A Not entirely, no, sir.

Q Not entirely?

A No.

Q Partially?

A No. On several meetings with yourself and Mr. Person there, like I told you in the deposition, there is a lot of water in my own personal case gone over the dam and it is hard for me to totally recall dates that happened six or seven years ago and individuals.

I am sure by the time you finish asking me questions today I will remember something that I didn't remember today.

Q Mr. Wills is Mr. Strimple's brother-in-law?

A Yes.

Q You haven't seen me or talked to me since your deposition was taken in August, true?

A True.

Q But you have talked to Mr. Strimple about this since then?

A Not before yesterday.

Q But you talked to him about it yesterday?

A Yes.

Q Speak to Mr. Person about it?

A No.

Q Have you by any chance read any documents connected with this case since your deposition?

A None other than my testimony that I signed.

Q Your deposition?

A Right.

Q Mr. Person didn't show you a book called "Plaintiff's Pretrial Brief"?

A He did not.

Q But today you remember Mr. Strimple's brother-in-law was there that day and you didn't remember that in August, true?

A Yes, sir.

Q On direct examination you testified that the first party that you approached when you began to look for a source of supply was Ken Dengler Chevrolet?

A Yes, true.

Q The first deal you approached was Paul Batt Buick and Dengler Chevrolet was the last?

THE COURT: Give him a chance to answer.

THE WITNESS: I said no.

Q In fact, Ken Dengler Chevrolet was the last dealer that you personally contacted with the possible exception of Bob Bain Chevrolet?

A No.

Q Didn't you go to Ken Dengler Chevrolet after the incident which occurred at Hamister-Gillogly Chevrolet with Mr. English?

A Yes, I believe you're right.

THE COURT: Obviously you have this very well in mind and I don't. Now, go a little slower and I have to listen to it and may even have to absorb it.

MR. KAPLAN: I am sorry.

THE COURT: Let's go back on the record and read that last series of questions about who came first.

(Record read.)

THE COURT: Go ahead,Mr. Kaplan.

Q Now, Mr. Bolling, you had an occasion when you met with a lawyer named Watson at your home in June of this year, true?

A True.

Q Mr. Watson represents Gillogly Chevrolet?

A That is what he said.

Q He interviewed you on that occasion?

A Yes.

Q And a court stenographer was present?

A True.

Q He asked you, did he not, who the first dealer you approached was?

MR. PERSON: I object, your Honor. I would like to make a statement about this particular transcript.

When I took Mr. Bolling's deposition this transcript was in the room and I asked that I have a chance to look at it and be able to read it and ask questions relating to it, and that was refused.

I don't think he has the right now to use this transcript or whatever it says when he denied me the right to be enabled to inquire.

MR. KAPLAN: I don't believe I have any

obligation to provide Mr. Person with a copy of the transcript while I was cross-examining the witness at his deposition.

3 THE COURT: Who took the deposition?

3 MR. PERSON: I took the deposition and this transcript formed the basis for questions asked and --

THE COURT: When did you learn about the existence of the transcript?

MR. PERSON: Only at that point.

THE COURT: When did you first learn about the interview of Mr. Bolling by Mr. Watson?

MR. WATSON: I believe I learned about it a week or several weeks earlier.

MR. KAPLAN: I should make a statement that Mr. Person was served with a copy of the transcript almost immediately upon the conclusion of the deposition and he had it now since the deposition for some time.

MR. PERSON: At the conclusion of the deposition.

THE COURT: I will permit questions on it.

Q Didn't Mr. Watson on that occasion ask you who the first dealer you approached with this proposition of yours for cars was?

A I am not sure.

Q Let me see if we can refresh your recollection. Weren't you asked the following question and didn't you give the following answer:

"Q Now, when you were trying to get long-term commitments what is your best recollection as to who you first contacted, if you have a recollection?

"A Paul Batt Buick."

Do you remember being asked that question and giving that answer on that occasion?

A If it is there I must have. I would like to say when this deposition was taken I was in my home and that I had a sick wife and two kids distracting me at the time.

Q Mr. Bolling, you told Mr. Watson on this occasion the truth, did you not?

A To the best of my knowledge, yes.

Q Paul Batt Buick was the first dealer whom you approached about getting cars, true?

A I could be wrong on that. I don't remember exactly verbatim what the order was.

Q At this time, Mr. Kaplan, we were in the process of contacting all the dealers to set up our distributorship --

THE COURT: Just a minute, let him finish. Finish your answer.

A (Continuing) We were in the process of obtaining or outlining our plan of attack as it were to go to various dealers and set up our distributorship. It wasn't only Paul Batt that we were considering, there were other dealers in the metropolitan Buffalo area and the surrounding areas that we had intended to approach.

I do not know that Ken Dengler, if I can say this, that Dengler was one of the first that we went to, and the reason for that was that I grew up next door, my father worked for him and worked for his father before his father passed away.

THE COURT: I take it that you don't remember precisely who was the first dealer that you approached, is that right?

THE WITNESS: Right. To list them in order I could not. I would not be able to at this time.

MR. PERSON: May I ask if there is any relevance to this line of questioning? I don't really see it.

THE COURT: It's cross examination and I think we better let Mr. Kaplan have some leeway.

A I can add this. The reason we went to Ken Dengler Chevrolet, I would have to say that came before Paul Batt Buick because when I merged with General Auto Sales I had five orders, all of which were Chevrolet products, and I had no basis, I had no initial orders, to go to Paul Batt Buick with, to add spice to my proposition.

Q You told Mr. Watson --

THE COURT: You have covered that. Let's go on.

Q In any event, you said a few moments ago that you went to Dengler after you went to Gillogly; true?

A True. After the instance --

Q After the instance with English?

A Yes.

Q You are clear on that?

A Yes.

THE COURT: Let's take a short recess,

please.

(Recess.)

BY MR. KAPLAN:

Q Mr. Bolling, after you say you encountered Mr. English at Hamister Gillogly Chevrolet, the dealership, you discussed that instance with Mr. Strimple; true?

A Yes.

Q You told him about it?

A Right.

Q You told him about it the same day it happened?

A Yes.

Q When Mr. Watson interviewed you at your home he asked you about the events that had transpired between you and Gillogly Chevrolet; true?

A Yes, he asked me quite a few questions about Clements-Gillogly Chevrolet.

Q Did he ask you all the dealings you had with Clements-Gillogly or Hamister Gillogly?

A True.

Q The story you told him on that occasion is not the same story you told here on direct today, is that right?

A I don't know. I didn't see a copy of the transcript.

Q In fact, when Mr. Watson asked you what happened between you and Hamister Gillogly Chevrolet you didn't say anything at all about having met Mr. English at Gillogly Chevrolet, isn't that right?

A I don't believe he asked me that.

Q Isn't it a fact, sir, that you described to Mr. Watson a meeting that you had --

THE COURT: Just a moment. If you want to use a prior transcript to prove somebody didn't say something, it doesn't mean anything unless I am shown that he was asked it or there was a reason for him to say it.

MR. KAPLAN: There needs to be a little more foundation on this because there is more than that one question that relates to what he told Mr. Watson.

Q Mr. Watson asked you about an occasion when you met with Mr. Hamister and Mr. Hallstead at Gillogly Chevrolet; true?

A True.

Q That was the occasion when you made your proposal to them about buying cars; true?

A True.

Q In fact, you told Mr. Watson that Mr. English was not there on that occasion; true?

A He was not on the initial presentation to Mr. Hallstead and Mr. Hamister.

Again, let me explain how that came about. I approached Mr. Hallstead, who was the sales manager for Cattrel Ford when I was employed there, because we had a friendly type relationship, and he seemed to think that the idea was a well-proposed one and suggested that we meet with Mr. Hamister, and he arranged the meeting with himself and Mr. Hamister.

At that time, when we first concluded -- at that time Mr. English was not there. I did not see him. He was not on the premises, as far as I was aware.

Q In fact, sir, didn't you describe to Mr. Watson --

THE COURT: I don't understand this. I don't understand why you don't quote from a transcript. You have a document there. It's simple to say were you asked this and did you answer this.

Q Were you asked the following questions and did you give the following answers on this occasion:

"Q Okay, and then what happened afterwards now as far as Hamister Gillogly? Did you have a subsequent conversation with Hallstead or anything with him or what?

"A Good question. No. Well, yes. Indirectly he was there but then we went to talk to Ollie Hamister. We ran into Robert English.

"Q Now, you say 'we.' Who is 'we'?

"A Dale and I.

"Q And you went again there and this time you wanted to talk to Ollie Hamister?

"A Right.

"Q And Ollie was an officer of the corporation?

"A We didn't run into Robert English. We didn't. We ran in to talk with him some time after. That was myself, Dick Hallstead, Dale and Ollie in the conference room at Gillogly Chevrolet."

You were asked those questions and you

gave those answers, is that correct?

A Yes.

Q Were they true, the answers?

A At the time in my deposition that we took in Buffalo, New York I testified, I said, I had made a mistake in that deposition that I gave to Mr. Watson and it was not Mr. Strimple, it was Mr. Kuhaneck who was present with me.

Q You told Mr. Watson that English was not there in the conference room at Gillogly Chevrolet, didn't you?

A No, I did not.

Q I'll read it to you again:

"A . We didn't run into Robert English. We didn't. We ran in to talk with him some time after. That was myself, Dick Hallstead, Dale and Ollie in the conference room at Gillogly Chevrolet."

Didn't you tell Mr. Watson that English was not there?

A At the beginning of the meeting he was not there.

Q You didn't say anything about "at the beginning of the meeting" when Mr. Watson interviewed you, did you?

THE COURT: Mr. Kaplan, if we have a problem of interpreting in this it is not going to be helpful to continue like this. I don't interpre it the way you interpret it.

Does he go on and describe that meeting?

MR. KAPLAN: He said --

THE COURT: Get the whole thing out then.

Q You were asked the following questions and answers, were you not:

"Q Tell me what the substance of this conference was.

"A He was interested, you know, again, explain the whole thing to Ollie and we supplied the answers to his questions to the best of our ability. And, we again, the figures like I said, I may be wrong on the quotes, because time has passed, but we got down to a definite figure. And he was interested. Again, he would have to contact his own office if there was within his franchise, limitations whether they could do it or not. And, again, the same answer as we got from Paul Batt, we can't do it. Then came the conference with Bob English."

Then you went on to say that the conference with Bob English --

THE COURT: Read it. It's far better for you to read than summarize.

MR. KAPLAN: It's many pages.

THE COURT: I have plenty of time for this. Proceed.

BY MR. KAPLAN:

Q "Q Now, okay. Now what do you have a recollection as to when this second conference took place at Gillogly Chevrolet with Hamister and Hallstead?

"A A few days after the first one."

If I may, your Honor, I can safely skip because there are pages here that have to do with what didn't happen.

At page 52:

"Q Did you talk to Ollie after that?

"A Yes.

"Q When was the next time you talked to him?

"A Talked to him on the telephone.

"Q About when?

"A Maybe a week, four days, I don't remember exactly how many days. Short period of time"

Skipping further down the page:

"Q What happened after this telephone conversation with Hamister?

"A Dale and I were -- why we were there I don't know but we were at Your Host Restaurant in West Seneca Mall or Plaza, there, on Ridge Road, whatever the plaza is there. I didn't mean the Ridge Road, Union Road. And I ran into Bob English and Dick Halstead and Ollie Hamister having breakfast there."

Now, sir, isn't that the only mention you made to Mr. Watson of having met with Mr. English, the meeting at the restaurant?

THE COURT: You've got the transcript. Either it is or it is not.

MR. KAPLAN: I will ask, through you, that Mr. Person concede --

THE COURT: Do you want this man to read over his whole transcript and interpret it? Okay. That's useless.

Has everybody read this?

MR. PERSON: I have glanced through it. The witness is testifying to what his present recollection is and also --

THE COURT: I want to know, does he refer to any other meeting with Me. English aside from the meeting at Your Host Restaurant? Does he?

MR. PERSON: I would have to review the transcript and report back.

THE COURT: Does he?

MR. KAPLAN: No.

THE COURT: You review it and you correct that statement of Mr. Kaplan's, if it should be corrected.

Is there testimony as to what was said by English at the Your Host Restaurant?

MR. KAPLAN: Yes.

THE COURT: What's that?

MR. KAPLAN: "And I ran into Bob English and Dick Halstead and Ollie Hamister having breakfast THERE. And got to talking. And, Bob English at that time made a statement that if any of his Chevrolet dealers were caught selling cars to us, they would find it very difficult to have their orders filled that they had placed with General Motors, they would not get another new car."

Q Today you have two occasions when you claim you saw English in Hamister's presence and he allegedly made a statement to the effect that was just read; true?

THE COURT: That's what he testified to. Why does he have to sum up?

Let's go.

Q On the occasion when you claim you met Mr. Hamister and Mr. English in the conference room at Gillogly Chevrolet you asked Mr. Hamister to sell you 200 new Chevrolets; true?

A I believe so.

Q You asked him to sell them to you at $25 or $50 over the manufacturer's invoiced price; true?

A Yes.

Q And $25 to $50 over invoice at that time, Mr. Bolling, was considerably below the prices that were charged to retail customers; true?

A True.

Q You also had some discussion on that occasion at Gillogly Chevrolet about Corvettes; true?

A Yes, I believe so.

Q You said in that meeting that you were buying or about to buy new Corvettes, true?

A True.

Q You mentioned the price at which you said you could buy them; correct?

A I believe so.

Q At the time of that conversation Chevrolet dealers in the Buffalo area could sell all the Corvettes they could get their hands on; true?

A I would have to say if they had the customers, definitely.

Q They were a shortage product, were they not, at that time?

A I don't understand what you mean by a shortage product. Everybody had them.

Q They were in short supply; true?

A They were a limited production item, yes.

THE COURT: You know what short supply means?

THE WITNESS: Yes.

THE COURT: Were they?

THE WITNESS: I can't answer this question.

MR. PERSON: He has testified that limited production is what that means.

THE COURT: You don't have to get up and explain. This is testimony. Let him testify.

Were they in short supply?

THE WITNESS: If he's asking me were there any in the metropolitan area the answer is yes. Or if the dealers were without these cars, the dealers did in fact have cars, Corvettes, in stock at this time. I don't know where the short supply and oversupply --

THE COURT: My idea is where in general -- and you may not know -- but was it in general true or was it not that there were more people wanting Corvettes than there were Corvettes available to be sold?

THE WITNESS: I don't know that to be true.

Q Isn't it a fact that at that time, at the time of this conversation, Chevrolet dealers could sell Corvettes in the Buffalo area for at least $1000 more than you were proposing to pay Hamister for it?

A I would say they could sell them for anything they wanted to.

Q Weren't they able to get at least $1000 more than you were offering to pay Hamister for them?

MR. PERSON: I object to the question.

A I don't know that figure to be correct.

MR. PERSON: It does not state whether it is wholesale or retail. I am not sure what he's referring to.

THE COURT: I thought we were all sure. The dealers don't sell wholesale.

MR. PERSON: They do.

THE COURT: Are you referring to a normal retail transaction?

MR. KAPLAN: That will become clear soon.

Q Didn't you testify in your deposition as follows:

"Q And you told those gentlemen that you were buying or were about to buy Corvettes $250 or $500 over invoice; true?

"A True.

"Q At the time of that conversation Chevrolet dealers could sell all the Corvettes they could get their hands on for $1500 or $2000 over invoice, isn't that correct?

"A Sure, they did it at Manheim at the auction."

Didn't you so testify?

A Yes.

Q Was it true?

A True.

Q After you made those statements about the price you were willing to pay Mr. Hamister Mr. English made a comment about it; true?

A I believe so, yes.

Q He told you that you were crazy if you thought you you would get cars for those prices, isn't that correct?

A Yes.

Q That's all he said, isn't it?

A No, it is not.

Q This encounter you claim to have had with Mr. English at Gillogly Chevrolet, that took place before you became a master distributor for Nabcor; true?

A True.

Q It happened before you signed the distributor agreement; true?

A I don't remember whether -- it was during the time that we were becoming one.

Q Didn't you testify at your deposition

that it was before you signed the agreement?

A I believe I said I was not sure.

Q Weren't you asked at page 160 the following question and didn't you give the following answer:

"Q But after the conversations with English you signed the paper, referring to the agreement; true?

"A That money was spent.

"Q You went and signed the paper; true?

"A True."

Didn't you so testify?

A Yes.

Q That was accurate?

A True.

Q I show you Defendants' Exhibit Y for identification. I ask you if that is not a copy of the master distributor agreement that you signed after this encounter with English.

A I believe it is, yes.

MR. KAPLAN: I offer it in evidence, your Honor.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit Y was received in evidence.)

xx Q The Nabor distributor franchise, that cost $25,000?

A I can't remember the exact figures.

Q Didn't you testify at your deposition it was $25,000?

A I believe that's right.

Q And that was true?

A Yes.

Q $20,000 of the money for that distributor came from you personally?

A I believe so.

Q Your portion of that money was paid in two installments?

A Yes.

Q The first installment you paid in July of '67 when you bought the broker franchise?

A Yes.

Q That was credited against the $25,000 for the distributor franchise?

A True.

Q And then the second installment you paid at or about the time you bought the distributor franchise?

A True.

MR. KAPLAN: If I may invite your Honor's attention to page 5 of Defendants' Exhibit Y, it says in the third paragraph "$7000 in cash upon the signing of the within agreement."

Q So, Mr. Bolling, after you had this conversation with English where you claim he threatened to cut off the supply of cars to dealers caught selling to you, you signed the distributor agreement, Defendants' Exhibit Y?

THE COURT: This is argumentative. I hope there will be an objection.

MR. PERSON: I object.

THE COURT: Sustained.

Q You were asked about this alleged meeting at Gillogly Chevrolet at your deposition?

A Yes.

Q When you were first asked about the conversation at your deposition you testified that Mr. Strimple was present; true?

A True.

Q Today you say that Strimple was not present; correct?

A True. I said it then too.

Q After you testified on direct at your deposition that it had been Mr. Strimple who was there, you were then asked on cross whether you were sure that Mr. Strimple was there?

A True.

Q You said you were certain of that, didn't you?

A I don't know whether I said that but I do remember changing my recollection at that deposition.

Q In cross examination at apge 142 of your deposition you were asked:

"Q You are sure about Mr. Strimple being there?

"A Yes."

You gave that testimony then?

A Yes.

Q Your deposition was taken in August of this year; right?

A Yes.

Q You were represented by counsel at your deposition --

THE COURT: To save time: did you later

change your testimony in the deposition about the matter of Strimple?

THE WITNESS: Yes, I did.

MR. KAPLAN: The circumstances are quite relevant.

THE COURT: I hope we can get it all together and not wait for Mr. Person to get into it.

MR. KAPLAN: We don't have to do that.

Q You were represented by counsel?

A Yes.

Q That was Mr. Person?

A Yes.

Q At the time of your deposition you knew that Mr. Strimple was a plaintiff here in this case, true?

A Yes.

Q And you knew he was represented by Mr. Person?

A Yes.

Q And you knew that General Auto Sales was a plaintiff here?

A Yes.

Q And you knew that Mr. Strimple owned at least some of the stock in General Auto Sales?

A Yes.

Q You knew that General Auto Sales was trying to collect damages here?

A True.

Q So when you testified that Mr. Strimple was there at the conversation with English, you knew Strimple had a financial interest in the outcome of this case?

A True.

Q You knew he had a financial interest in corroborating your testimony about that meeting; true?

A No.

Q You didn't know that?

A No.

Q You think it is bad for your case, your story about Mr. English?

A No.

MR. PERSON: I object to this. He's berating the witness.

THE COURT: I don't understand it. Go ahead.

MR. KAPLAN: I think the selection of a person to be a witness to that conversation who the witness at the time knew had a financial interest in that conversation coming out the way he was telling it is relevant.

MR. PERSON: I object to the use of the term "selection of a witness."

THE COURT: Let's not belabor it. What happened at the deposition?

Q At the deposition you were then confronted with Mr. Strimple's testimony about this?

A Yes.

Q In the page that was read to you Mr. Strimple had testified that he was not there when you talked to English; true?

A I believe so, yes.

Q And he had testified that he had never been present at any conversation concerning Nabcor where anybody from General Motors was ever present; true?

A Again, I believe that's right.

Q A few minutes after you were confronted by that testimony by Mr. Strimple you volunteered that you wanted to make a statement; true?

A True.

Q And then you testified that Strimple was not there when you met with English; true?

A True.

Q And you said Gary Kuhaneck was there; true?

A True.

Q Kuhaneck was associated with you in Multi-Make Auto Sales?

A Yes.

Q And he was associated with you in General Auto Sales?

A True.

Q And you thought that Kuhaneck would corroborate your testimony as to what English is supposed to have said; true?

A No. I didn't think that at all. Like I said earlier in this testimony, I'm sure when you ask me questions and Mr. Person gets done asking me questions tomorrow, I'll remember things I didn't think I should have remembered today.

Q After saying Mr. Kuhaneck was there, Mr. Kuhaneck was not only denied that he was there but denied the whole thing ever took place?

A He could be lying, yes.

Q This was nine years ago, is that right?

A Yes.

Q You don't remember exactly what it is that Mr. English said?

A Yes, I do.

Q Didn't you testify at your deposition that you didn't remember exactly what English said?

A Word for word, but the context of the conversation I remember.

Q You claim that you owned 55 per cent of the stock of General Auto Sales, the plaintiff in this case, true?

A Pardon?

Q You claim to own 55 per cent of the stock in General Auto Sales, true?

A Now?

Q Yes, now.

A Well, I don't really know how much stock I own now, or if there is any.

Q Didn't you testify at your deposition that you claimed to own 55 per cent of the stock in General Auto Sales?

A At the time it was General Auto Sales, yes.

Q Didn't you testify that you claimed that ownership on the day your deposition was taken?

A If there is any stock then I own 55 per cent of it, yes.

Q And that's true today?

A Yes.

Q Over the years since you first --

THE COURT: What do you mean, if there is stock? Is the corporation still in existence?

THE WITNESS: I don't know.

THE COURT: It's a plaintiff in this action, isn't it?

THE WITNESS: Yes.

THE COURT: Is it your corporation --

MR. PERSON: May I help the court?

THE COURT: No. I want him to answer.

THE WITNESS: Maybe I can clarify it.

MR. KAPLAN: Maybe I can help out your Honor.

Q Didn't you testify as follows at your deposition:

"Q All right. Now, you said this morning I believe on direct when General Auto Sales was formed you owned 55 per cent of the stock; correct?

"A True.

"Q You have never sold that stock; true?

"A True.

"Q You still claim you own 55 per cent of the stock?

"A True."

You so testified?

A Yes.

Q That's true?

A Yes.

Q Since you first became a Nabcor broker in 1967 you have had a series of financial reverses, is that correct?

A That's correct.

Q You invested $30,000 in your Nabcor franchise, true?

A Yes.

Q And you lost all of that; correct?

A Yes.

THE COURT: You mean the original Multi car franchise?

THE WITNESS: The whole thing. Multi-

Make and the General Auto Sales & Leasing.

THE COURT: Your total investment in those two companies was --

THE WITNESS: Roughly $30,000.

THE COURT: That has been lost?

THE WITNESS: Yes.

Q After your connection with these Nabcor franchises you were involved in a Dodge dealership; true?

A Yes.

Q That was Dan Knoll?

A Inc., yes.

Q You lost $60,000 in that venture; true?

A Roughly, yes.

Q As a matter of fact, when we took your deposition in August you were unemployed, is that correct?

A Yes.

Q Mr. Bolling, in fact, you regard your testimony in this lawsuit as a way of getting your money back, isn't that so?

A No, it is not. I have no idea whether there is any chance of me gaining anything out of this whole thing.

Q You don't have any idea if there is any chance of you gaining anything out of this whole thing?

A That's right.

Q At your deposition Mr. Person, or some other lawyer, asked you about some events that had taken place, and you testified as follows, sir:

"A lot of water has gone over the dam since this happened, and if someone told me seven years ago after that I would be here in a trial trying to get back my money I would call them a damn liar."

You so testified in August?

A I believe you asked me that.

Q Those were your words?

A Yes.

Q And the question that preceded them was by Mr. Person and not me; true?

I'm showing you the transcript at page 75.

A Mr. Person asked that.

Q So in your own words you said that if someone had told you seven years ago --

THE COURT: Why do you repeat?

MR. KAPLAN: The witness is trying to put the words in my mouth rather than his.

THE COURT: You have made that clear. You don't have to repeat.

Q That's what you are doing here, trying to get back your money, isn't that so?

A What money? I don't know that I can gain anything out of this.

MR. KAPLAN: I have nothing else of this witness.

THE COURT: Do you have redirect?

MR.PERSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Did you have occasion to meet with Mr. Kaplan in Florida?

A Yes, I did.

Q When did this occur?

A Again, I don't remember the exact dates.

Q Approximately.

A 1974.

Q Was anyone with him?

A Yes.

Q Is that person in the courtroom?

A Yes.

Q In early 1969?

A No, sir, January, 1970.

Q I take it you never sold or transferred your stock in General?

A Not to my knowledge.

Q Did you actually get shares, get share certificates when you bought your stock in General at the time of the merger?

A I believe we issued, yes, sir.

Q Do you have those still?

A I don't know where they are if I do.

THE COURT: Mr. Kaplan, go ahead.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Bolling, following the encounter you had with Mr. English and Mr. Hamister, General Auto Sales began buying cars from Gillogly Chevrolet?

A Not while I was involved with them.

Q You don't deny they did so, do you, sir?

A Pardon?

Q You don't deny that they did so, do you?

A No.

Q You say this meeting in the hotel in Florida

THE WITNESS: I went in with Bolling --

THE COURT: I'm sorry to interrupt. Go ahead, with the main point, Mr. Person.

Q Did you ever hear the name Kenneth Womack?

A On numerous instances.

Q When did you first hear that name?

A I believe that I heard the name Kenneth Womack from Ken Dengler of Ken Dengler Chevrolet and Oldsmobile.

Q Whom do you think Mr. Womack was?

A I was told that he was --

MR. KLEINBARD: Here, again, we are getting back into this co-conspirator hearsay question. He's a dealer, Dengler, and he's reporting what he heard --

THE COURT: Who is Womack?

MR. PERSON: The head of the Buffalo Chevrolet --

THE COURT: All we are trying to get is Womack's identify and I take it it is stipulated that Womack was --

MR. KLEINBARD: Zone manager in the Buffalo area for Chevrolet.

MR. PERSON: And Mr. English's superior, is that correct?

MR. KLEINBARD: That's correct.

Q Mr. Strimple, did you have any occasion to attempt to communicate with Mr. Womack?

A Yes, I did.

Q Could you tell me very briefly what gave rise to this attempt?

MR. KAPLAN: Objection.

THE COURT: I'll allow that.

Did you ever talk to Mr. Womack?

THE WITNESS: I attempted to talk to him on two or three different instances.

Q State why briefly, very quickly.

A Because in this very short period of time where we were contacting numerous dealers concerning a source of supply which became needed because we became master distributors, every time I was refused it was suggested that I get with Womack.

MR. KAPLAN: Objection, your Honor, and I move to strike.

THE COURT: Denied.

Q Who suggested this?

A The dealers.

MR.PERSON: That's just the introductory information, your Honor.

Q You then attempted to communicate with Mr. Womack. Describe what you did.

A I placed a telephone call to him and told his secretary who I was and she said, "Just a minute," and came back and said Mr. Womack, or something to that type, was not interested in talking to me, or something of that nature.

MR. KAPLAN: If it please the court, I move to strike the testimony on the ground there is absolutely no foundation for it. And even if this gentleman did talk to his secretary the statements of the secretary are not admissible against the company.

THE COURT: Motion denied. The objection is overruled.

Q Do you believe that you tried any additional times to talk with Mr. Womack?

A I believe that there was at least two to three times that either myself or Mr. Bolling, we were very closely associated, took this course of action.

THE COURT: Talk about your own self.

Mr. Bolling has testified. Talk about your own efforts.

You tried to call Mr. Womack again?

THE WITNESS: Your Honor, what my problem is, this was so closely related over a number of years that in many times what he and I were doing, because we were inseparable, is almost line one or the other doing it.

I know in this period of time Mr. Womack was tried to be contacted at least a couple of three different times ror one reason or the other.

THE COURT: Do you recall doing it at least once?

THE WITNESS: At least once I did it myself.

Q Are you familiar with Paul Batt Buick?

A Yes. I am very familiar with Paul Batt.

Q Did General ever attempt to order a car from Paul Batt Buick?

A Yes.

Q Do you remember the first car that General attempted to order from Paul Batt Buick?

THE COURT: All right, go ahead. Let's not get too much detail.

Q At this point what did you do, the last time you saw the car?

A I had a conversation with Collins and Batt protesting the car being gone and the statement that the zone had taken the car back.

Q Did you attempt to obtain a car?

THE COURT: Did you look for the car?

THE WITNESS: Yes. I went around the service area. The car was nowhere around. Paul and I rapped about it quite a little bit and we ordered another one.

Q Who did you order it from?

A Paul.

Q Did the car come in?

A The car eventually arrived, another one, an exact duplicate of the one that went back to the zone. I think it arrived about five or six weeks later.

MR. PERSON: I have no additional questions and I would just like to say that I would have asked some questions about warranty problems.

THE COURT: All right, cross-examine.

I assume you have another witness? This is going to be all over very quickly.

THE COURT: All right, fine.

Q At the occasion when you say you called this secretary of General Motors, in fact, sir, she didn't tell you that Mr. Womack didn't want to talk to you, did she?

A She said something to the effect"Mr.Womack isn't in to you."

Q Mr. Strimple, the reason you called the zone office that day was to find out about a fleet certificate application which you had been told that Gillogly Chevrolet had made on your behalf, true?

A If you say so.

Q Isn't that what happened?

THE COURT: Let me hear that question and answer, please.

(Record read.)

THE COURT: It isn't what Mr. Kaplan says, it is what your memory is. What is the fact?

THE WITNESS: I know that I was calling Mr. Womack to straighten out, try to straighten out why I couldn't get delivery of new Chevrolets in the Buffalo area.

Q Isn't it a fact that you called the zone office that day to ask about this fleet certificate application?

A That was the purpose of my call, yes.

Q The secretary simply said to you that she was going to contact the dealer, true?

A As I recall, she said, "Just a minute," and came back and said something to the effect -- I can't remember the exact words over this period of time, but -- "Mr. Womack doesn't want to talk to you," or "Isn't in to you," or something to that effect. Because the name Nabcor was mentioned to the secretary.

Q I am going to read to you from the deposition, page 127:

"Q Did you ever call anybody at General Motors as opposed to the dealers and ask for a fleet certificate?

"A I called on them one day and got some secretary on the line who I told Hamister Chevrolet, whatever the name was, Gillogy Chevrolet, was trying to get a fleet certificate to me and what was the status of it.

"Q What did she say?

"A She said she'd get back with the dealer."

You so testified, Mr. Strimple?

A That is right, I think that was on the second time that -- now that I recall that I called him.

Q Now you say this was the second time/

A I am just saying to the best of my recollection that there were two or three times that this sort of thing took place.

Q Mr. Strimple, you called General Motors only once, true?

A That I recollect specifically, yes.

2 Q In that one telephone call the only thing the secretary said is that she'd get back with the dealer, true?

A I am sorry, Mr. Kaplan, but there had to be another conversation in there. That is what I just originally said, plus that one there.

Q Well, sir, you were asked later in your deposition whether there were any other conversations, weren't you?

THE COURT: Read it, Mr. Kaplan.

Q "Q Mr. Strimple, when you were examined in this case some time ago where you told us about a telephone call you made to General Motors Chevrolet Zone Office in Buffalo in which you spoke to someone that identified herself as secretary to the zone manager, Mr. Womack. Do you recall that?

"A Yes.

"Q Apart from that telephone call with the secretary, had you had any personal contact with anyone employed by General Motors since July 1, 1967?

"A Not that I recall at the moment."

A I just recalled this one.

Q You just recall this one?

A When you brought it to my attention with the conversation.

Q This took place in 1967.

THE COURT: Who brought it to your attention?

THE WITNESS: Mr. Person, about the conversation, what was said?

THE COURT: Anything else?

MR. KAPLAN: One more thing, I believe, your Honor, if I may have just a second.

Q Mr. Strimple, I show you Defendants' Exhibit Y in evidence and ask you if that is the master distributor's agreement you signed with Nabcor?

THE COURT: Can you have someone call and find out if Mr. Maiorana left?

MR. PERSON: He is on the way over here now. He is in New York and is heading over here and is approximately about six or seven minutes away.

THE COURT: How do you know that?

MR. PERSON: He just made communication with my office and he will be here.

THE COURT: Does he have a telephone in the car?

MR. PERSON: We have a telephone in the building. To telephone I just spoke with my office.

THE COURT: Where was he calling from?

MR. PERSON: Mr. Ehrlick of my office called and the office manager is transporting the witness over here personally.

THE COURT: All right. He got to your office? That is fine.

Q Mr. Strimple, you had a chance to examine Defendants' Exhibit Y in evidence?

A Yes.

Q That is the master distributor franchise you signed?

A That certainly looks like it.

Q You did it on about the date October 6, 1967, true?

A I would say that is right.

Q You mentioned you bought a number of cars from Batt Buick after the episode we have been talking about, true?

A Several, I believe.

Q By way of background, you explained before that you went around trying to get dealers to sell cars to you in the late 1967 period, true?

A No, we didn't have that many customers for Buicks.

Q I am not talking about Buicks alone any more, Mr. Strimple.

You testified that you went around to a number of dealers trying to get cars in late 1967?

A Yes.

Q That Buick was one of them, true?

A Yes, source of supply on Buicks.

MR. KAPLAN: Your Honor, if I may, there is no objection to Defendants' Exhibit E, a schedule of new automobiles obtained by General Auto Sales from dealers in the Buffalo area, and I would like to offer it.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit E for identification received in evidence.)

MR. KAPLAN: I would invite your Honor's attention to the large number of sales by Clements-

Gillogly Chevrolet dated in April, 1967.

THE COURT: Just a second, Mr. Kaplan.

Was there a separate zone manager for Pontiac?

MR. KAPLAN: Separate distributors for each division.

THE COURT: If we are talking about Gillogly we are talking about Mr. English?

MR. KAPLAN: He was Chevrolet only.

THE COURT: He would not be involved with Cadillac or Pontiac?

MR. KAPLAN: Correct.

THE COURT: All right.

Q Mr. Strimple, there came a time, did there not, when Mr. Bolling told you he had an encounter with Mr. English at Gillogly Chevrolet?

A Yes, he did.

Q He told you about that encounter the day it happened, true?

A I don't really know if it was the day it happened.

Q Didn't you say it was the day it happened?

A Mr. Bolling told me about his encounter with Mr. English, but I don't remember the day.

Q Was there ever a time when you claim that

Gillogly Chevrolet wouldn't sell to you?

A Yes, there was a period of time immediately following this.

Q Following what, sir?

A I mean in the same short period of time that we were going to so many different dealers.

Q When in relation to your conversation with Mr. Bolling about Mr. English was it that Gillogly Chevrolet refused to sell to you?

A All of this took place within a period of a couple, three months, in 1967, 1968 period.

Q Mr. Bolling said this morning a proposal was made to Gillogly Chevrolet and a meeting with English took place at the time and Gillogly Chevrolet said this is your answer. Is that what Mr. Bolling told you at the time?

A Mr. Bolling told me that Mr. English told him and the dealer that he was with that he would cut the source of supply for any dealer found selling to Nabcor, which we wrote in a letter specifically at the date, I believe, within a very short period of time specifying these things.

Q Now, sir, was that conversation that Bolling told you about with English and Hamister the only time that Hamister--Gillogly Chevrolet refused to sell to you?

A Would you repeat that?

MR. KAPLAN: If the reporter would be so kind.

(Question read.)

A No, later on this new car sales manager, Cloments-Gillogly, asked if he would sell automobiles to us.

Q Who was that, Mr. Hallstead?

A Yes. I didn't know him at the time.

THE COURT: The sales manager?

THE WITNESS: Yes, Dick Hallstead.

Q That was a few days after Bolling reported on the conversation with English, true?

A Very short period of time, yes.

THE COURT: Are you saying Hallstead refused to sell?

THE WITNESS: He said that wehad to get a fleet number.

Q Mr. Strimple, how is it you came to have this conversation with Hallstead?

A Because I would not believe from my years in the automobile business anyone wouldn't be interested in selling all types of cars.

Q Mr. Strimple, at your deposition you testified that you went to Gillogly Chevrolet late in 1967 and tried to get cars, true?

A To the best of my recollection.

Q The first time you did that you saw Mr. Hallstead, true?

THE COURT: Are you referring to the deposition?

MR. KAPLAN: I am asking him whether that isn't the case.

THE COURT: I just ask you to do this to the extent you possibly can, if you refer to depositions read questions and answer, no matter how long it takes, and don't ask him in general terms if he remembers something at a deposition.

You read it and then we will have a clear distinction between what was in his deposition and what he is testifying here in court.

Let's go back and start this over.

Q Mr. Strimple, you claim that you first tried to get new cars from Gillogly Chevrolet in 1967, true?

A I believe that is right.

Q The first time you tried to get new cars you went over to Gillogly Chevrolet and saw Mr. Hallstead, true?

A True.

Q There was nobody else from Gillogly Chevrolet there besides Hallstead on that first occasion, true?

A As far as I can remember. I am not absolutely sure that some fellow by the name McDonald wasn't there.

Q I read to you from your deposition, page 141:

"Q On the first occasion when you went in to ask him for cars after you were with Nabor was anybody there?

"A Not that I recall.

"Q Was anyone else with you?

"A Maybe Don Bolling was with me.

"Q Anyone else?

"A Gary Kuhaneck.

"Q Anyone else?

"A No."

Did you give that testimony?

A No. He has got it down so I must have given it.

Q The first time you went Halstead was the first guy there from Gillogly Chevrolet?

A That I can remember.

Q On that first occasion you told Mr. Halstead you wanted to buy 200 new Chevrolets at $25 to $50 over invoice; true?

A Yes.

Q And that was for cars that you wanted to buy over the course of a year, true?

A True.

Q And you had also with on that occasion five or six orders for specific cars; true?

A I don't recall.

Did I testify to that? I don't recall it now.

THE COURT: Read it.

Q "Q Now, did you ask Halstead for any particular kind of cars?

"A Just some regular Chevrolets.

"Q Did you have orders at that time for five or six Chevrolets?

"A Yes."

You gave those five or six orders to Mr. Halstead?

A Now I recall.

We originally had, at all times, five to six orders for specific automobiles that we were trying to set up our source of supply with.

Q Mr. Bolling reported to you about his contact with Mr. English at Gillogly Chevrolet?

A Yes.

Q That was a few days after you went into Mr. Halstead with this five or six orders?

A I don't know whether it was before or after datewise.

Q At your deposition, sir, you testified as follows:

"Q So the very next time you had any communication with Clements-Gillogly was on the occasion when Bolling saw English there?

"A As I recollect, yes.

"Q About when was that?

"A When Bolling ran into English?

"Q Yes.

"A Didn't go too many times after that. It began happening one circumstance after another."

You so testified?

A Yes. I testified that I could not remember exactly --

THE COURT: You gave that testimony?

THE WITNESS: Yes.

Q And Bolling told you about his conversation with English after you had given the five or six orders to Halstead; true?

A I don't really recollect the exact dates.

Q That's what you said in your deposition.

THE COURT: We have his deposition and

we have his testimony here. Let's go to something else.

A It took place, definitely.

Q After Mr. Bolling reported on his conversation with Mr. English you had a telephone conversation with Mr. Halstead; true?

A Would you read the deposition that was taken so I know what was said.

Q Do you remember now as you sit here today whether you had a telephone conversation with Halstead after Mr. Bolling reported to you about Mr. English?

A I had numerous meetings with Halstead over the time that this was involved. You are trying to relate this to a matter of a few days.

Q I will read to you from your deposition:

"Q Before we get to that, is quite a few months later the first time you learned that you were not going to get the five or six cars you ordered?

"A No, no. We got a telephone call just stating that they could not help us.

"Q Was that before or after Bolling ran into English?

"A That was after.

"Q Now, who got the telephone call?

"A I did.

"Q Who called you?

"A Halstead.

"Q And what did Halstead say to you?

"A He said that they could not help me at this particular time, but if I wanted to get into a Mr. Womack down in the Buffalo zone, take it up with him.

"Q Did he say anything else?

"A No."

You so testified?

A Yes.

Q It was true?

A To the best of my recollection.

Q After this conversation with Halstead, where he said he could not help you, the very time you had any communication with Gillogly Chevrolet was a few months later; true?

A As far as I can recollect.

Q On this very next occasion after that phone call you ordered a couple of cars from Gillogly?

A Yes, sir.

Q You got those cars?

A Yes.

Q After that you continued to order cars from Gillogly Chevrolet?

A Yes.

Q And from that point on you got every car you ordered from Gillogly Chevrolet?

A Can I explain why?

THE COURT: Answer his question first.

A Yes.

Q So the only time you claim that Gillogly Chevrolet refused to sell you is the time that Halstead called you a few days after Bolling reported about English and said he cannot help you with the five or six orders, true?

A Yes.

Q All of the alleged refusals to sell to you by dealers in the Buffalo area took place between September of '67 and February of '68; true?

A I don't actually recall the exact dates.

Q Let me read to you --

THE COURT: Just a moment.

MR. PERSON: I wanted to make the observation,inasmuch as it is not relevant for me to develop these areas I question the relevance in doing it --

THE COURT: What do you mean by that?

MR. PERSON: I thought we were not going to go into the various hearsay episodes and that we are going to restrict ourselves to what we might call foundation testimony.

Mr. Kaplan is going into at length what is essentially the area which I was not going to go into and he has been using this time and time again.

THE COURT: It's a matter of the type of evidence. The rule, as we said many, many times, is that there has to be a basis in nonhearsay evidence for admitting the hearsay evidence and we are trying to have a hearing now limited as much as possible, or in theory it should be limited entirely to non-hearsay evidence. Nothing --

MR. KAPLAN: I hasten to add --

THE COURT: I was about to say that I don't think there is anything that Mr. Kaplan is asking this witness about which is in the category of the questionable hearsay evidence, but maybe I'm speaking too quickly.

MR. KAPLAN: To the extent I have elicited conversations between the witness and Mr. Bolling and the witness and Mr. Halstead, they of course are offered not for the truth of the matter stated but for the state of the witness' mind, the relevance of which is going to become apparent very rapidly.

THE COURT: Let me think a minute.

(Pause.)

THE COURT: Mr. Person, if you feel the there is any material drawn out of cross which requires you to put in other things for the sake of completeness, I will permit you to do that. There has been in Mr. Kaplan's cross examination specific cross examination about the specific conversations in dealings with the secretary at Mr. Womack's office, the incidents at Buick. There has been specific cross about the English incident or the reporting of that by Mr. Bolling to him, and then the purport of the other cross is really, as I understand it, to see whether there was any follow-up of that incident by actual refusals of cars.

MR. KAPLAN: In part, your Honor.

THE COURT: Those are the main things

I get out of this. I certainly think it is not hearsay to ask this witness when he was refused cars, when he was supplied cars, how many, and so forth.

In any event, you are keeping notes of the cross, I am sure, and if there are any things you want to fill in, or you want to think an incomplete record is made on cross, I'll certainly be happy to let you go on.

MR. PERSON: I want to point out that the thrust is really to confuse the witness.

THE COURT: That's not necessary.

MR. PERSON: It seems to be to create an aura of confusion drawn on a part of the case I'm not to put into evidence.

THE COURT: I could not agree less with that. These are questions -- I don't accept that at all.

You may proceed.

Q I'll read to you from your deposition at page 582:

"Q Mr. Strimple, all of the alleged refusals to deal by Buffalo-area automobile dealers that you have complained about in this lawsuit took place in the period from 1967 to February, 1968, is that correct?

"A The greater portion of it, yes.

"Q All of them, didn't they?

"A I think all of them that I remember."

You gave that testimony, sir?

A I believe I did.

Q That was true, was it not?

A To the best I could remember at the time I gave it.

Q You don't remember any referrals after February of 1968 to date, do you?

THE COURT: I don't understand why you don't let it go at that. You have asked him in the deposition and he has answered now.

Q During that period from September of 1967 to February of 1968 you had a number of telephone conversations with Frank Maiorana concerning attempts to buy cars in Buffalo; true?

A Yes.

Q As a result of those conversations you wrote letters to Mr. Maiorana on several occasions; true?

A Yes.

Q You wrote him letters telling him things that you had already told him on the telephone; true?

A Yes.

Q You did that in order to make that a matter of record; true?

A Yes. I think I was getting my position across, yes.

Q To the best of your ability you wrote full and complete accounts of what happened to you in these letters to Mr. Maiorana; true?

A Well, not to start with, but as it went along I tried to get a lot more explicit.

Q I'll read to you from your deposition:

"Q And you were doing them to make it a matter of record?

"A Right.

"Q And you were writing complete and full accounts as best as you were able, is that right?

"A Right."

That was true?

A You are very adept at words.

Q You so testified?

A In the text of that, yes.

Q After Mr. Halstead told you he could not help you about the five or six orders that you had placed you wrote a letter to Mr. Maiorana about it; true?

A Did I testify --

Q Did you write such a letter, Mr. Strimple?

A I don't remember at the moment.

Q I show you Defendants' Exhibit NNN for identification. I ask you if you recognize that document.

Do you recognize that exhibit?

A Do I recognize the letter?

Q Do you recognize the letter.

A Yes.

Q It's a letter you wrote to Mr. Maiorana; true?

A One of them that I had caused to be written.

Q In fact, you dictated this to your secretary; true?

A Yes.

Q And she didn't leave anything out that you dictated; right?

THE COURT: He signed the letter.

Is this your signature?

THE WITNESS: No. My secretary signed it for me.

Q You dictated it to her?

A Yes.

Q You added the P.S. on the bottom or had her add it after you had written the letter?

A That sounds like what I said.

Q There is not a word in this letter about Mr. English; true?

THE COURT: I can read. There is not a word about Mr. English.

Are you offering the letter?

MR. KAPLAN: For the limited purpose of establishing that he did not mention Mr. English in the context of the letter, not for the truth of the matters asserted; I offer it forthat limited purpose.

MR. PERSON: I would like to inquire of the witness.

THE COURT: You want voir dire?

MR. PERSON: Yes.

THE COURT: You may have it.

VOIR DIRE EXAMINATION

BY MR. PERSON:

Q Were you aware when writing this letter of a Mr. English?

A I don't really know in between the exact dates the conversation with English and this took place. It could be one day layer or more or less. It was all in this period of time.

Q Had you heard of the name Womack before you heard of the name English?

A I can't say. They both were so close in their I could not say one date quicker than the other one.

MR. PERSON: I object to the limited introduction on the grounds I don't think it is established that the writer of the letter was aware of English's existence at that time. It could have preceded these events.

THE COURT: I will overrule that.

Received.

MR. KAPLAN: I would like to point out that the witness had already testified that the only time Gillogly Chevrolet refused was after the English episode, and Mr. Bolling testified that he went --

THE COURT: Let's go on.

(Defendants' Exhibit NNN was received in evidence.)

xx BY MR. KAPLAN:

Q It was after you wrote the letter, Defendants' Exhibit NNN, when Gillogly Chevrolet started selling to you; true?

A To the best of my recollection, yes.

Q As a matter of fact, sir, there came a time after the English episode and after Gillogly started to sell to you when you told Gillogly Chevrolet you wanted GM fleet allowances; true?

A True.

Q And the GM fleet allowances were moneys that General Motors paid to the dealers on cars that were sold to certain fleets?

A Yes. They did pay rebates to fleet buyers.

Q And the dealer could instruct General Motors to pay that money directly to the buyer; true?

A I believe that was the way they worked it.

Q When you requested that Gillogly arrange for you to get these fleet allowances you gave them a list of serial numbers of cars that you claimed --

THE COURT: Please face the reporter. I am seriously concerned about this record. You have to speak slower and louder. Take your time. It's going to be a great pain in the neck to have to go through this record and put in missing words and changed words.

Please.

Q At the time you went to Gillogly Chevrolet and asked them to arrange to get you the fleet allowances you gave them a list of serial numbers of cars you claimed to have bought; true?

A At what time was this?

Q After the English episode.

THE COURT: At the time you made the request for the fleet allowance.

A I made a request, yes.

THE COURT: Whatever time that was, did you give them a list of serial numbers of cars you had sold?

THE WITNESS: I think they already had --

THE COURT: Did you give them a list of serial numbers?

THE WITNESS: Any one that they didn't have I gave them, yes.

Q And some time after that occurred, Mr. Strimple, you received a check from General Motors for the fleet allowances you claimed; true?

A Yes.

MR. KAPLAN: If your Honor please --

THE COURT: We will take a recess now. Are you finished?

MR. KAPLAN: Not quite, but a recess would expedite matters.

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MR. KAPLAN: Your Honor, I would like to offer documents here which are relevant to the witness's testimony. The only objection that has been raised is the truth of the statements attributable to Nabcor.

We will begin with Defendants' Exhibit FF. It is not offered for the truth of any statement attributable to plaintiffs.

THE COURT: What are the other numbers?

MR. KAPLAN: II and JJ.

THE COURT: Now, let me get your position.

MR. KAPLAN: FF is a letter from Mr. Hamister at Clements-Gillogly Chevrolet requesting a fleet allowance on vehicles sold to Mr. Strimple's company.

It is offered for the purpose of showing that it was received by General Motors and not necessarily for the truth of the statements about automobiles they have purchased. I believe so limited Mr. Person has indicated no objection.

THE COURT: Is that right, Mr. Person?

MR. PERSON: Correct, your Honor.

THE COURT: Received for that purpose.

xx (Defendants' Exhibit FF for identification received in evidence.)

MR, KAPLAN: Defendants' Exhibit II is a letter from Mr. Swope who at the time was design organization manager for Chevrolet in Buffalo to Mr. Hamister stating that in his view General Auto Sales qualified under the General Motors fleet program.

That is offered for the fact that it was said by General Motors to Mr. Hamister. I believe that so offered for this purpose there is no objection.

MR. PERSON: There is. I am not sure whether Mr. Hamister is qualified to make that determination, that we are accepting his opinion in here as to qualification.

THE COURT: It is Mr. Swope. Do you want to go back to talking about Exhibit FF?

MR. PERSON: I would like to point to the letter, II, demonstrates there is the necessity of a waiver and the waiver has to be obtained, so I don't think that we can use these letters to prove any qualification. There seems to be a condition in the letter II.

MR. KAPLAN: The next document is going to show something, Mr. Person.

THE COURT: You have no question about FF now?

MR. PERSON: FF and II don't prove any qualification.

THE COURT: What qualification are you talking about?

MR. PERSON: For a fleet allowance.

MR. KAPLAN: The witness testified he received it.

THE COURT: That is just background as to why General received a check for a fleet allowance from General Motors, right?

MR. KAPLAN: Correct, your Honor.

THE COURT: I can't see any problem with this.

MR. PERSON: There is a necessity of some kind of waiver for some circumstance.

THE COURT: Look,just to provide the line of causation leading up to this event of receiving a General Motors check for fleet allowances, it seems to me these things are useful.

Obviously if they are not authentic and are forgeries or something like that, I don't want them in. But you don't question their authenticity?

MR.PERSON: No.

THE COURT: I will receive it for the purpose I dsecribed, FF ane II.

xx (Defendants' Exhibit II for identification received in evidence.)

MR. KAPLAN: Lastly, I would offer Defendants'

Exhibit JJ for identification for purposes other than the truth of the statement attributed to General Auto Sales.

It is an application for fleet allowances made by Clements-Gillogly Chevrolet to General Motors and is approved by Mr. Womack and it is dated August 30, 1968.

THE COURT: I will receive it on the same basis.

xx (Defendants' Exhibit JJ for identification received in evidence.)

MR. KAPLAN: I have nothing else for this witness, thank you.

THE COURT: Any redirect examination?

MR. PERSON: Yes, just a couple of minutes, your Honor.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Mr. Strimple, do you recall approximately when General was able to purchase automobiles in the Buffalo area with virtually no trouble?

MR. KAPLAN: Your Honor, I do object to virtually no trouble..

THE COURT: Overruled.

A Yes. It occurred at the time I became associated with Econo Car, which was a very large leasing company.

Econo Car was buying a number of Chevrolets from Clements-Gillogly. Mr. Hennessey personally introduced me to Hallstead who I had met informally before but now I was introduced to somebody that was a friend and they would take an order of course to Econo Car and bill them to General, so I was hopefully going to end up getting a fleet number.

Q Did you get one?

A I think in the end, I think I was about entitled to it with the list that Mr. Kaplan -- but by that time it was too late for General as far as money was concerned and everything.

Q Were you in financial difficulty at this time?

A Yes.

Q Could you describe the effect of this difficulty?

A I had exhausted all the money that was available --

THE COURT: Talking about General?

THE WITNESS: Yes.

A (Continuing) General had exhausted all the funds, had borrowed a lot of money from my brother-in-law which was gone. I couldn't hold the organization or anything together any more because of money and I was grabbing at straws and that is why I went in with Econo Car, to try to get them to take leases for me and with their connections, I could get cars.

Q When did this financial difficulty develop?

A During the latter part of 1967 and the early part of 1968.

Q Did it develop after the first refusal to deal?

A Right.

Q When did this occur approximately, the first refusal, of a franchise dealer to show cause to you in the Buffalo area?

A Back in latter 1967, I believe. As I said, we were trying to establish supply to set a thousand brokers which was our goal, totally realistic.

Q Did this take capital?

A Yes, it did.

Q Did you have enough capital?

A Not if we couldn't get automobiles to supplent our income and to live while we were doing this and to pay people to run and hold meetings and that sort of thing.

Q Did you complain to any governmental authority during this period?

A Yes. There was a time that I approached the United States Government and asked them to investigate what was taking place with me and I described it and Nabcor, which also had a sizable hunk of our money, and they did.

Q Do you recall approximately when you made your first and only complaint?

MR. KAPLAN: I didn't hear the question.

Q Do you know approximately when you complained to the department of government?

A I don't recall right at the moment, but I am sure that Mr. Kaplan will have the exact date.

Q I can't call him right now to the stand.

A I don't remember right now. The time that I went to the United States Attorney General, but it was --

Q Did you mention Mr. English when you went?

MR. KAPLAN: I object to that, your Honor.

THE COURT: Overruled.

A I undoubtedly did.

Q Did you mention Mr. Womack?

A I undoubtedly did.

Q What department of the government was it?

A It was actually I got into I believe to examine an antitrust. I told the United States Attorney General the total text of the different things that had been taking place over the amount of time and the different moneys expended.

They ended up holding a grand jury action on this thing.

Q After you complained to the government did anything develop?

A Things eased up totally all the way across as far as automobiles were concerned when the news got out that the government was in on it for antitrust. I had no problem at all. All the people that couldn't sell me before all of a sudden were very happy.

Q Was your business able to prosper at that time?

A No.

Q Why not?

A Because to start with I didn't dare to borrow any more money because if they could shut me off effectively as I was shut off from the latter part of 1967 until 1968, if at any time I started to work mass distribution, which is what I was trying to accomplish, they could absolutely shut off my source of supply, and this can be any time they wanted to do it.

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THE COURT: Can I hear the last question and answer?

(Record read.)

MR. PERSON: One last question, your Honor. I would like to have with your permission, give a brief description of what the potential economically was as he thought with General Auto Sales.

THE COURT: Not now. I have other problems. Can I see the exhibits, please?

BY THE COURT:

Q I am not clear about these events you described to Mr. Person just now.

A Which one, your Honor?

THE COURT: You said at some point you made an association with Econo Car?

THE WITNESS: Yes.

THE COURT: What is Econo Car?

THE WITNESS: It was a very large leasing and daily rental company operating in Buffalo which bought numbers --

BY THE COURT:

Q Just a minute. Which bought cars, right?

A Numbers of cars, a great number of cars.

Q Now, what was your association with them and when did you make it?

A In the early part, a month or two in the early section 1968, I believe, around there, and the purpose of the connection was --

THE COURT: What connection did you make?

THE WITNESS: I became an associate in the sense that I would take and operate from our location and I would take and work on getting leases for Econocar.

THE COURT: You would operate from the General place of business?

THE WITNESS: And get leases for Econocar which, due to the fact that I could not get financing, they could get teh financing for the leases.

THE COURT: I'm sure the lawyers can ask the questions better than I can, but why -- are you going to have recross?

MR. KAPLAN: Briefly.

THE COURT: Do what you want to do and then, if anything is still remaining I don't understand, I will come back to it.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q This complaint to the government that you were talking about was offered in a grand jury investigation; true?

A Yes.

Q You testified before a grand jury?

A Yes.

Q You did so on June 10, 1969, is that correct?

A I don't remember the date.

Q I read to you from your deposition on page 581:

"Q You did so on June 10, 1961, is that correct?

"A Yes."

That was true?

A If that was the date the grand jury met and you have researched it, I'll accept it.

THE COURT: He has accepted it.

Q Beginning as early as February of 1968 dealers in Buffalo whom you claim initially would not sell to you began selling cars to you; true?

A Because of my association with Econocar, yes.

Q They started to sell to you in 1968?

THE COURT: I have the exhibit and it has the list of deliveries beginning February 22, 1968 and going through November 26, 1969.

MR. KAPLAN: Your Honor, at this time

I would like to offer in evidence paragraphs 8 and 9 of GM's Request No. 5 of admissions of fact which have been admitted, and if I may read them --

THE COURT: Just a moment.

THE WITNESS: Your Honor --

THE COURT: One thing at a time.

Just a moment.

MR. KAPLAN: I am offering paragraphs 8 and 9 of GM's Admiissions of Fact No. 5 dated August 31st of this year. They are our requested admissions. Their accuracy has been admitted.

Paragraph 8 reads as follows:

"No grand jury was impanneled in the United States District Court for the Western District of New York to investigate any matters relating to or allegations by Nabcor, General Auto Sales & Leasing, Inc., Multi-Make Auto Sales, Dale Strimple and Donald Bolling, or any of them, on or before March 5, 1969."

Paragraph 9 reads as follows:

"No witness was subpoenaed or requested to testify before any grand jury investigating any matters relating to or allegations by Nabcor (w/w) General Auto Sales & Leasing, Multi-Make Auto Sales, Dale Strimple, and Donald Bolling, or any of them, on or before March 5, 1969."

I offer those paragraphs.

THE COURT: Anything else?

MR. KAPLAN: I would like to offer also General Auto Sales' response to GM's first set of interrogatories, No. 20, subparabraph B, verified by Mr. Strimple.

The question, the interrogatory, was:

"State whether you were engaged in the business of renting or leasing new automobiles and, if so,

"B. State the number of such automobiles," and so forth, the balance being irrelevant.

Mr. Strimple's answer to paragraph 20B says "None (in 2969 and 2970 plaintiff leased a number of Econocar vehicles. However, such leasing had no relationship to the Nabcor system or to this action)."

I offer that and I have no further recross.

THE COURT: Mr. Strimple, getting back to the details of this thing, you said that in early 1968, or beginning in early 1968, you became associated with Econocar. What did that mean? What did you do?

THE WITNESS: That means that acting as one of their associates I could call up practically any dealer in Econocar's name, get any automobile, and the dealer would be willing to bill the automobile to General. That was subterfuge but that was the only way I could get automobiles.

THE COURT: Did you actually put a sign on your place of business saying: Econocar lease and rental facility or agency? Did you do anything like that?

THE WITNESS: I don't remember. We were handling their leases for them.

THE COURT: I don't know about this. This is all vague to me. Do you lease it to or from?

THE WITNESS: A lease --

THE COURT: I know what a lease is.

THE WITNESS: All I would have to do is call in, for example, to Hamister --

THE COURT: I want to know the other end. Did you do any leasing of cars to people who wanted to lease cars?

THE WITNESS: Yes.

THE COURT: How did somebody know to come to you?

THE WITNESS: We solicited them. In other words, we took in and had different people that we knew contact friends of theirs, lumber companies, any place that we thought might be interested in leasing an automobile. In other words, we contacted people who were leasing cars previously.

THE COURT: Did you do this for Econocar or for General?

THE WITNESS: I did this for Econocar for the privilege --

THE COURT: Just a minute.

Can you give me an idea of the volume of cars you leased in this way during 1968? Was it one or two cars or 100 cars?

THE WITNESS: On this period of time we had close to 100 automobiles, somewhere in that neighborhood, on lease for Econocar?

THE COURT: You said you had 100? In other words, you had leased to outsiders a total of 100 automobiles?

THE WITNESS: Roughly, yes, sir.

THE COURT: Do I understand you kept separate books for General and Econocar? In other words, the receipts from anybody who paid for leasing would go to Econocar and not to General?

THE WITNESS: Right. And then our records all got stolen.

THE COURT: I'm not getting to that. Maybe never.

You previously testified that when you found out that the Buick could not be obtained from Batt Buick you then immediately reordered another similar car; right?

THE WITNESS: Yes.

THE COURT: Did you do that at that time? Did you say anything about Econocar, that this was for Econocar, or something like that?

THE WITNESS: Yes.

THE COURT: This schedule which has been introduced says that you bought a 1968 GMC truck on March 14, 1968 from Maiere Schule, GMC, and I guess there were two trucks bought on that same day from that same company. When you bought those trucks from Maiere Schule did you say anything about Econocar?

THE WITNESS: No. I told them I had become a retail outlet, a second branch for him.

THE COURT: Did you buy these in the name of General?

THE WITNESS: As a second branch.

THE COURT: What do you mean, a second branch?

THE WITNESS: Maiere Schule is a huge truck company and they had had quite a lot of difficulty selling their light vehicles, and Ed Schule and I were very close and I suggested we take and use our facilities, which was pretty central in a suburban area, as a second place for his trucks, his light trucks.

THE COURT: This says you bought two trucks.

THE WITNESS: Yes. If we would sell them he would issue an MV-50 to us. That's a certificate of sale for a vehicle, to us showing that we purchased a truck. He would even handle the financing for us.

THE COURT: What would you pay him? Something over cost?

THE WITNESS: Yes.

THE COURT: What? What did you pay him?

THE WITNESS: $25 or $50, plus they got 2 per cent --

THE COURT: He understood you were going to resell it.

THE WITNESS: He would let us make whatever profit we could over this and he would handle the financing and give us the money.

THE COURT: You would make a profit by reselling?

THE WITNESS: Yes.

THE COURT: You paid what over his cost?

THE WITNESS: $25 to $50, plus he kept a holdback.

THE COURT: There is a sale reflected on this exhibit, an order placed January 30, 1968 with the Gillogly Company for a Chevrolet, and the date of the sale to you was April 4, 1968. When you made that order did you say it was in connection with Econocar?

THE WITNESS: I'm not sure of the date, your Honor, but this was the definite connection that

Econocar made for me.

THE COURT: Can you answer the question I asked you?

THE WITNESS: Specifically for that particular vehicle?

THE COURT: Right.

THE WITNESS: No.

THE COURT: You can't remember whether you did or did not?

THE WITNESS: I can't say specifically I mentioned Econocar on that particular vehicle.

THE COURT: I don't want to udnertake to go down this list, but --

THE WITNESS: I did mention it very strongly to them.

THE COURT: To whom?

THE WITNESS: To Halstead, who I was introduced by Jack Hennessey.

THE COURT: Who was he?

THE WITNESS: The sales manager.

THE COURT: Of whom? You knew Halstead back in 1967?

THE WITNESS: I had met him like seeing somebody there and just going in and talking to him.

I was physically introduced as someone he should do business with at this time and was recognized as an associate of Econocar. I knew who he was. I talked to him about an original order, but I didn't know him.

THE COURT: I don't want to undertake the laboring oar, but we have a situation where there is a general statement, the purport of which is, from this witness, that he was shut off from General Motors cars during the fall of 1967 at a time when it was important financially for him to get his start and at a time when he was trying to earn some money to supplement his capital; that the only way he could get started again buying vehicles was to become associated with Econocar, and his testimony, the purport is, what I am asked to infer, that the only reason that General Motors dealers started selling was because they wanted to sell to Econocar; that they would not have sold under a normal Nabcor arrangement.

THE WITNESS: That's absolutely right.

THE COURT: That's what you have told me. If that's the case we will drop it.

It's a kind of generalization and I don't know exactly what to make of it without knowing more, and nobody is bothering to go into it more. I don't know what this is about.

MR. PERSON: I think the word --

MR. KAPLAN: If I may, your Honor, I think there are two simple ways to clear this up. The first is in the answer to the interrogatory which I offered a few moments ago: the witness swore that the Econocar connection began in 2969.

THE COURT: I may have missed the date.

MR. KAPLAN: The answer is there. There exists a great deal of documentation which backs up the exhibits which your Honor referred, the schedule, invoices and the like.

I would invite Mr. Person through your Honor to stipulate that with the exception of one automobile which was evidently sold by Bob Bain Chevrolet, all of the documentation and all of the invoices are made out to General Auto Sales and Leasing, not to Econo Car. And this is in the one case involving Bain Chevrolet, the documentation initially was was made out to Econo Car and was then crossed out and General Auto written in over it.

The alternative is that Mr. Person doesn't feel he can make such a concession, I will ask the witness to return tomorrow and be prepared to introduce through him all that documentation. I don't think it is really necessary.

THE COURT: Wait a minute. Now, the date is quite important. I had not focused on the literal wording of that interrogatory.

If the connection with Econo Car didn't start until 1969, that is a big difference from 1968.

But when you are dealing in such general terms, the term isn't documented when he went to Econo Car, isn't there anything that is down?

MR. PERSON: We may be able to ask him a few questions.

THE COURT: I've got to say to you, Mr. Kaplan, the wording to the interrogatory is not that precise that it just excludes the possibility that he had some subterfuge association in 1968 as he said to get these cars.

MR. KAPLAN: I will be candid with your Honor that I think that is true but I think one has to bear in mind that first of all that at the time he answered that he was not faced with the necessity of explaining why the sales started, and, secondly, in deposition, I believe the portion that I read earlier, Mr. Strimple essentially testified and I would be prepared to dig out, the exact reference, that the reason they were selling him was because of the grand jury investigation.

He was then confronted with the fact that the grand jury investigation was a year and a half after they started selling. It was only since that happened in his deposition that the Econo Car explanation surfaced.

THE COURT: Is that clear from what you have read already?

MR. KAPLAN: I don't think I could say that. It would be clear if I had a few moments to dig it out.

THE WITNESS: I said one of the reasons.

MR. KAPLAN: Whatever it says it says.

THE WITNESS: It is so technical in wording--

THE COURT: Wait a minute.

MR. PERSON: There appeared to be two items there and one is not the actual convening of the grand jury but in going through the motions of doing that.

THE COURT: He hasn't dated that. This is unbelievably vague.

Now, we have got a situation where there is a very substantial number of cars bought beginning late February 1968 pursuant to orders beginning early in December 1967.

Now, I have a witness on the stand who explains all of that because he says he was able to enter into some subterfuge using the name Econo Car.

Now, then he also says that it had something to do with his complaint to the federal government.

The date of his connection with Econo Car were not established. The date of his complaint to the federal government is not established, it just happened sometime. We do know that the grand jury didn't convene utnil March 1969.

But I would be a lot more comfortable to have some things a little more precise.

MR. PERSON: Could we work on them tomorrow and try to clean it up the first thing in the morning?

THE COURT: That was the thing I proposed. You talk about all those sales and documents --

MR. KAPLAN: Yes, your Honor. I have several of these invoices with me in court. I don't have by any stretch of the imagination all of them.

But this is Nabcor. . document 30226 and this for example is an invoice from Clements-Gillogly Chevrolet for a car sold to Mr. Strimple in October 1968.

THE COURT: Is that an exhibit?

MR. KAPLAN: It was not marked because this was a total surprise to us.

It is made out to General Auto Sales not Econo Car and it is my recollection that all of the invoices and all of the documentation save that relating to a single vehicle from Bain Chevrolet is exactly like this which, of course, is not really very consistent with the notation that Econo Car was being used as some sort of subterfuge.

THE WITNESS: Could I explain this?

THE COURT: All right.

THE WITNESS: After I became associated with Econo Car and they could get the automobiles which they wanted to sell, they would bill it to anybody. Econo Car, the deal, he could get all types of automobiles for whatever he wanted, whatever basis he wanted them for. They were an established fleet account.

And so that as I just said, after they could get the cars all I had to do was tell them to make the billing to me and they were more than happy to do so.

BY THE COURT:

Q Was there any documents between you and Econo Car? Did you sign an agreement?

A Yes.

Q Where is the agreement?

A All the records got stolen. It is on the police blotter, somebody broke in and stole our records.

Q Did they steal the records of Econo Car?

A All of the records of General Auto.

Q But did they steal the records of Econo Car?

A No, not Econo Car's office. I would say those types of records could be made available.

Q Did you enter into an agreement with Econo Car?

A Yes.

Q What type of agreement was it?

A I would take and be an associate, get automobiles leasing and he would give me so much for a lease.

That was arranged and I was also by way of training his leasing manager, which he wanted to take over.

Q When did you enter into that agreement?

A I would have to research the exact date, your Honor.

Q Was it one of these things --

A In this period of time.

Q Did you enter into the agreement before starting whatever activity you did?

A We had before we actually did anything, we had quite a while of conversations and working together to get the thing set up.

B2 Q When did you say you did anything?

A Before we actually made any agreement like legal agreement, written documents.

I could sit and talk to somebody and say we will do this and this.

Q You had negotiated before you signed the agreement?

A Right.

Q Well, did there come a time when you went to General Motors dealers and said that you were associated with Econo Car?

A Yes.

Q Did you have your agreement signed by that time?

A No. I think Hennessey took me around and introduced me to some of his dealers before --

Q Who is Hennessey?

A He is head of Econo Car. In other words, I went with him to visit some of his dealers. He was a large buyer of Cadillacs for example from Kaiser Brothers which opened up a source of Cadillacs to me.

He was a large buyer of Chevrolets which opened up Clements-Gillogly to me.

He was a large buyer of Fords which opened up a Ford dealer to me.

I mean, they were all willing to sell.

Q He took you around?

A Right. We would go to pick up a new automobile or some of the new automobiles, I would ride down with him.

Q I know this can be gone into in a lot more detail, but in general what were the dealers told by you and Hennessey as to what could be done?

A I was an associate of Econo Car and I would be selling leases for them.

Q Were the General Motors dealers told that you would be buying or General would be buying these things?

A The dealers would ask who did I want it billed to.

Q You would say General?

A General if it was a car for myself or order one for them to bill to Econo Car.

Q Were they apprised that General was a Nabcor franchisee?

A But they didn't really care -- yes.

Q They were told?

A They knew, right.

Q Were they told that the cars would be resold to Econo Car?

A I don't think I got that definite, your Honor.

Q In other words, you are telling me that they were told that you were connected with Econo Car, right?

A Right.

Q Mr. Hennessey of Econo Car was taking you around?

A Right.

Q Econo Car was in the car leasing business?

A And rental business too.

Q So, in other words, the General Motors dealers were told these cars would be for Econo Car to use in their rental and leasing business, right? Is that what they were told?

A Told by Hennessey that I was an associate of Econo Car and that I would be ordering cars for him for lease.

Q So that Econo Car would lease them, right?

A Right.

Q Now, let me ask you this:

The cars that you bought listed here as being bought in the spring of 1968, were they in fact -- you are telling me it was represented to the General Motors dealers that these were for use by Econo Car? Is that what you are telling me?

A Chevrolet particularly, your Honor. I didn't have trouble getting GMC trucks.

Q The trucks, there are just two of them?

A Right. But I was struggling franticly to get a fleet number as totally something I was told by everybody that I got into that I needed to do this.

Q Just one step at a time.

You have given me the impression and maybe you didn't intend to do this, beginning in early 1968 the dealers that you dealt with were told that these cars wee for Econo Car.

Now, I am asking you, and I want you to look at this list. I want you to look at the first page of the list which goes down through November 15, 1968. It includes several dealers, Clements-Gillogly, Brown Pontiac, Kaiser Cadillac, Batt Buick. These are the car dealers.

Now, I want to know whether any of those dealers were told that these cars were for Econo Car, all of them, some of them were and which ones. Do you understand my question?

A Yes, but --

Q Was it all?

A It didn't exactly happen -- let me try to tell you exactly the way it would happen.

Q Now, not would happen but how did it happen.

A If I wanted a Chevrolet after I became associated with Econo Car, I would call up and say I want --

Q I can't deal with that testimony. I want to know when you got associated with Econo Car and when it was that you were taken over to Clements-Gillogly and told them that these cars were for Econo Car, if that happened.

Did it happen?

A Yes, it did.

Q When did it happen?

A May I research the exact time?

Q You got the list of cars. Can you give me the month that it happened?

A I think these negotiations started with, let's say --

Q Please answer my question. When was it?

A I believe about the middle of 1968.

Q You know my question. I want to know when it was that you say that --

A I have no recollection with Mr. Hennessey to be honest with you.

Q You don't remember when it happened?

A No, I forget when and this goes back six or seven or eight years.

These several months got very critical, one seemed like another.

THE COURT: I want to repeat that your witness gave me an impression that these sales were caused by his being able to represent the association of Econo Car. Now, it turns out that he has no memory when this occurred.

You must have probed this and gone into this and you and your witness gave me this impression and it is not a correct impression.

I don't appreciate it and it is causing us a lot of trouble so we have to go back into this tonight and I expect you when you put on a witness to give an impression, that that impression is something you believe to be accurate.

So you work it out tonight and try to find out the date or else I will disregard this entire line of testimony about the so-called Econo Car angle.

MR. PERSON: Your Honor, I have to say that the thrust of what I was trying to do was to show that the complaint to the Justice Department is what caused this and I have not attempted to develop this fine.

This developed somewhat surprisingly to all of us.

THE COURT: Who developed it first?

MR. PERSON: I thought you did in a sense, but it wasn't in my pre-trial brief and the witness merely volunteered and we were all sort of taken by surprise and I think Mr. Kaplan will agree with that.

MR.KAPLAN: I am delighted to agree, Mr. Person.

THE COURT: Wait a minute. The record shows it was not brought out by me.

MR. PERSON: By Mr. Kaplan actually.

THE COURT: Mr. Kaplan asked him when he started -- Mr. Person asked at the very first part of your redirect examination this question: "When did General start purchasing cars in the Buffalo area with virtually no trouble?"

And the answer was when this witness became associated with Econo Car.

So I obviously had the impression, and I do not think I am mistaken, that you were trying to bring that out from this witness by questions which you asked.

So we went on from there. I am simply saying that as it stands now, the witness can't remember when it was that he went around with Hennessey or anything else and made the Econo Car representation to the General Motors dealers and if you want any weight given to that, you better be careful with me and establish as carefully as you can the date. Otherwise, I will have to disregard it.

(Continued on next page.)

3 As far as the complaint to the Federal Government, again, the date is very vague and the question in my mind now is whether this vagueness is an intentional vagueness, and that I do not appreciate.

MR. PERSON: It is not, your Honor.

THE COURT: If it isn't, then work it out.

MR. PERSON: We are trying to show, if we can, why apparently this witness has taken the position that the sales freed up. Apparently the sales were not as freed up as I thought. I was not aware of any proviso as to a leasing company. I thought, and I think Mr. Kaplan will agree, that we believed that sales generally hqd freed up during the period in 1968, isn't that correct?

MR. KAPLAN: The witness so testified in deposition.

MR. PERSON: So I was only developing it to show why it freed up.

THE COURT: Let me just ask you this. I don't wish to pursue an issue that you don't want to pursue. But if I just ask you pointblank, do you contend on behalf of your clients that the freeing-up of sales to General in 1968 was caused by the connection with Econo Car?

If you don't contend that, I certainly won't make any further issue of it.

MR. PERSON: I would like to discuss it with the witness tonight as to whether or not it really was freed-up. I am now in doubt. Therefore I don't know exactly. I would like either to cut the whole line tomorrow and maybe strike it out if it is irrelevant or else develop it.

THE COURT: You work on that tonight and also the timing of the complaint to the Federal Government.

MR. PERSON: I will develop that.

MR. KLEINBARD: I would like to take something up. I want to apologize for my voice, but I would like to know the people who are going to take the stand tomorrow. I assume that both Maioranas are going to take the stand.

MR. PERSON: From what I gather Frank Maiorana is on trial with his son, who has a personal injury trial in Pennsylvania, and I was told that he can't be freed, and I really don't know what to do because he is the last witness other than the depositions, and I am going to have to ask for --

THE COURT: Isn't Anthony coming?

MR. PERSON: He is here now.

MR. KLEINBARD: I would assume that he will not rp

NATIONAL AUTO BROKERS CORP.,
et al,
Plaintiff,

vs. 70 Civ 5 421A

GENERAL MOTOR CORPORATION,
et al.,
Defendants.

New York, October 7, 1976;
10.20 A.M.

Hearing resumed.

- -

MR. KAPLAN: If your Honor please, before we start, there is an error in the transcript and perhaps your Honor's notes can clear it up. It is on a material point.

At page 174, you were questioning Mr. Strimple about reordering the Buick from that Buick and you asked, "Did you say anything about Econo Car, that this was for Econo Car or something like that?"

The transcript has the answer as "Yes." My own notes indicate that the answer was "No."

THE COURT: Mine do, too.

MR. KAPLAN: May that be officially corrected, your Honor?

MR. PERSON: There may be a misunderstanding. May we go over that point again?

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THE COURT: Well, I am going to look at my notes, but I have a note that the reorder of the Batt there was no mention of Econo Car.

Let's do this with the witness. Mr. Strimple, why don't you come back to the stand, please.

DALE STRIMPLE, resumed.

THE COURT: You are still under oath, Mr. Strimple.

I want you to take a look at this transcript and I was asking you some questions and you recall that. Why don't you read again line 9 on page 174, down to line 19. Just read that to yourself.

THE WITNESS: This is the whole text right here?

THE COURT: The question is, Mr. Strimple, the transcript typed here as you answering as follows, and I will read the question:

"The Court: Did you do at that time, did you say anything about Econo Car, that this was for Econo Car or something like that?"

The answer here reads "Yes."

Now, do you recall what you answered?

THE WITNESS: Yes, but I think, your Honor, that I was misinterpreting at that time and I am trying to be very honest --

THE COURT: Look. You can explain all you need to, but my law clerk's notes record that your answer was "No" and my notes record that your answer was "No." The defense counsel -- do you have notes?

MR. KAPLAN: Yes, that the Batt order didn't involve Econo Car.

THE COURT: Three of us, and my memory is that the answer was "No." We just want to have a correct transcript. We certainly would permit you to amend or amplify that answer in any way you see fit, but do you recall what you answered yesterday or don't you?

THE WITNESS: I specifically think I said "No."

THE COURT: Well, we will enter that correction and then if you want to amplify or do anything you need to do, we certainly want to probe this as much as we need to.

Before we start, I will give you back this transcript, Mr. Kaplan, and I now have delivered to me the complete transcript from yesterday -- this is not complete, I suppose it will be up shortly.

I suggested that further work and I guess the lawyers suggested also that further work might be done on the question of the chronology about the Econo Car matter, and with respect to the complaint to the Department of Justice which we discussed at some length.

Now, what do you have to say on that, Mr. Person?

MR. PERSON: I have three exhibits which I have marked, Plaintiffs' Exhibit 523, 524 and 526.

THE COURT: Those are premarked for identification?

MR. PERSON: That's correct, your Honor.

THE COURT: Where do we go from there?

MR. PERSON: I would like to have Mr. Kaplan look at these for the time being. These have been produced to him, with the possible exception of the covering letter from the Justice Department.

(Pause.)

MR. PERSON: I would like to hand up to your Honor the copies I have just noted on the record.

Is there any objection to the introduction of these into evidence?

MR. KAPLAN: I would object to 523 and 526. While Mr. Strimple made the complaint alleged in 526 at the time we met him, there is absolutely no evidence of record that anyone other than Mr. Strimple and the United States attorney knew anything about it. In particular, there is no evidence whatever that any of the automobile dealers in the Buffalo area knew anything whatever about this complaint until the time of the grand jury investigation.

As Exhibit No. 524 demonstrates -- and I might add that 524 is the document which provided the basis for the admissions which were read into the record yesterday as of the time of the grand jury investigation -- the grand jury investigation didn't begin until at least March of '69. No witnesses were called and no subpoenas were and none were sought. Therefore, you can't possibly infer from 526 that there was any reason for the dealers in Buffalo to change any practices that may or may not have happened prior to that time until the grand jury investigation started, which is over a year after February, '68. For that reason I would submit that of all of these documents 523 and 526 are immaterial, they prove nothing.

MR. PERSON: We were looking for a date that the matter was brought to the attention of the Justice Department. I believe a grand jury is not convened without the development of evidence to be further developed at the grand jury. I

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argue that there is some point before the actual convening of the grand jury where there is an independent investigation to determine whether there should be a grand jury.

MR. KAPLAN: If I may, your Honor, I understand Mr. Person's point, but if there was any evidence whatsoever that any dealer in Buffalo knew about Plaintiffs' Exhibit 526, it might be a different story. But there is not. I don't think that one can infer from the fact of that complaint that anybody knew about it.

MR. PERSON: This was in point, your Honor. Frank Maiorana will testify that he had advised Mr. Belcher, who was the assistant to Mr. Roche, president of GM, in December of 1967 that Mr. Strimple -- maybe not naming him, but his Nabcor brokers were getting anxious to go to the Justice Department and report these activities and therefore GM should take action to prevent this.

THE COURT: Maybe GM did.

MR. KAPLAN: The state of the record is that he complained and the dealer sold to him.

THE COURT: What would you hope to be accomplished? Did you simply want to make a record

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for an antitrust suit or did you want to get cars?

MR. PERSON: They were anxious to get cars.

THE COURT: If Mr. Frank Maiorana complained to the assistants or Mr. Roche and said "If you don't shape up we are going to pursue this with the authorities" --

MR. PERSON: They didn't shape up. That's the problem.

THE COURT: That's a question of fact.

Look, Mr. Person, I will receive 524 and 526. I take it there is no question of the fact that it was sent.

MR. KAPLAN: If Mr. Person will represent to me that letter is authentic --

MR. PERSON: I've produced these documents for Mr. Kaplan previously, copies of that.

THE COURT: He's not questioning authenticity.

I will receive 526 to simply show that a letter was sent from the assistant United States attorney in Buffalo to the assistant attorney general of the Antitrust Division in Washington, February 2, 1968.

I would reasonably infer, even if it didn't say this, that that was the result of some complaint. I will take it as an established fact that there was a complaint by Mr. Strimple to the government around February 1, 1968. I'm not going to take it to prove the narrative facts stated therein.

Also, this letter in and of itself does not show that information about such complaints was conveyed to General Motors or to General Motors dealers. That's another question. But we take it one step at a time and that's where we stand.

So 526 is received.

Now 524 I take it you have no objection to, Mr. Kaplan.

MR. KAPLAN: I have no objection.

THE COURT: 524 is received.

How about 523?

MR. KAPLAN: I think that is immaterial in view of the concession with respect to authenticity.

MR. PERSON: I agree.

THE COURT: You withdraw your offer then.

MR. PERSON: To be able to establish a terminal point at which we can say that the dealers in the Buffalo area were aware of the grand jury investigation, I would like to offer an exhibit marked for identification No. 532, which is a copy of the subpoena and the list of persons who were subpoenaed. This is a document I received from the Justice Department under the Freedom of Information Act and it is dated April 21st, saying that subpoenas duces tecum were served on the listed people on April 16, 1969.

(Plaintiffs' Exhibits 524 and 526 were received in evidence.)

xx MR. PERSON: Do you offer any objection to receiving that?

MR. KAPLAN: I have no objection.

THE COURT: It is received.

(Plaintiffs' Exhibit 532 was received in evidence.)

xx MR. PERSON: I might add this was received by me in a subsequent mailing by the Justice Department.

THE COURT: What about the Econo-Car thing?

MR. PERSON: May I have him testify that he did go to the Justice Department on or about February 21st?

MR. KAPLAN: So stipulated. In that letter.

THE COURT: I said I would take it as fact.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Mr. Strimple, you are familiar with the company Econo-Car. What's the full name of that company?

A Well, Econo-Car Leasing, Inc. is a nationwide company, and the Buffalo division --

THE COURT: Just a minute. This is redirect?

MR. PERSON: Yes, your Honor.

THE COURT: Proceed.

A Econo-Car of the Buffalo office is a very large daily rental service and also long-term leases.

Q Where, during the beginning of 1968, was the office of Econo-Car in Buffalo?

A It was on Genesee Street in Buffalo. Actually I would say it would be Cheekpowaga, which is suburb of Buffalo.

Q When did you first learn about this company Econo-Car?

A From the ads they were running in the newspapers about daily rental service and leasing.

Q Could you put an approximate date or time on this?

A I knew of Econo-Car and leasing in 1967. I originally got to know them in early 1968.

Q Could you describe how you did get to know them in early 1968?

A I stopped in their office and was talking about what you had to do to obtain a license for daily rentals.

Q What type of license, as you call it?

A Well, the information you would need for the special type of insurance for daily rentals, the type of licensing, if there was any special regulations governing this type of operation, and at this time I got to know Mr. Hennessey, who owned the Buffalo operation of Econo-Car.

Q Do you know if it was a franchise operation?

A Yes, it is.

Q Mr. Hennessey was the head of this Buffalo operation?

A Yes, he was.

Q Did you have any discussions with him concerning any relationship that you --

MR. KAPLAN: Objection.

THE COURT: Overruled.

A I explained to him my problems of getting automobiles and my problems with financing and that I was running into business that I could not do anything with, and that also I was very low on money but I had a nice location.

He suggested that I work with him to get leases.

Q Was there any arrangement agreed upon?

A An association. I would work out of my office, my location, General Auto Sales, in a dual capacity, that I could operate my business and also obtain business for him.

Q Did you commence such a business?

A I did.

Q About when?

A I started working on getting leases in the early part of 1968. It was in that first two- or three-month period of '68.

Q In connection with your activities involving Econo-Car did you have occasion to solicit any GM dealers in the Buffalo area?

A Oh, yes.

Q Were you ever accompanied by anyone from Econo-Car?

A Yes. In fact, Hennessey introduced me to Mr. Halstead. And I mean by introduction, to taking me in personally and saying, "This is an associate," and so forth, "This is Mr. Strimple who is working with me."

Q Subsequent to that did you have occasion to be on the premises of Clements-Gillogly Chevrolet?

A Repeat that.

THE COURT: When did Mr. Hennessey introduce you, as you say, to Mr. Halstead?

THE WITNESS: In early 1968.

MR. PERSON: We can establish an approximate date with the next couple of questions, your Honor.

THE COURT: May I see yesterday's exhibits in evidence.

(Continued on next page.)

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THE WITNESS: The reason that I note this date to be this way, your Honor --

THE COURT: Mr. Person may have some questions.

BY MR. PERSON:

Q Subsequent to your meeting with Mr. Hennessey did you have occasion to go to the premises of Clements-Gillogly Chevrolet on Econo-Car business?

MR. KAPLAN: May I have the question read?

(Question read.)

A Yes.

Q Did you meet anyone on the premises of Clements-Gillogly working for Econo-Car?

A No. I met a person on the premises of Clements-Gillogly who was renting a car from Econo-Car.

Q A person going to rent from Econo-Car?

A Right.

Q Do you recall his name?

A Bob Smith.

Q Do you recall the approximate time of year or date at which this meeting occurred?

A I think it was in about February, because it was snowing, and I gave Mr. Smith a ride down to the Econo-Car office.

Q You believe this was in the Winter of 1967-68?

A Right.

Q Is that as close as you can come to identifying the date?

A The reason that I remember Bob Smith was that he introduced me to Amway at the time that we were riding down for a rental car for him and so I could pinpoint that time.

THE COURT: How does that pinpoint the time?

THE WITNESS: Because I became an Amway distributor in this period of time.

THE COURT: What is Amway?

THE WITNESS: It is mass distribution of household products.

THE COURT: When did you become a distributor of Amway products?

THE WITNESS: In early 1968.

THE COURT: Early meaning what?

THE WITNESS: The first two or three months in 1968.

Q Do you recall if these activities you have described took place during the time that you first went to the Justice Department to make a complaint on February

1, 1968?

THE COURT: I don't understand that question, during the time. If the time was February 1, how could all these other activities be before or after or what?

Q Can you recall whether your meeting at the Clements-Gillogly Chevrolet where you saw Mr. Smith, did that occur, if you can recall, before or after the time that you visited the Justice Department on February 1, 1968?

A All of these events took place within a very few days of each other.

THE COURT: All of what events?

THE WITNESS: The event of me going to the Justice Department, becoming associated with Mr. Smith.

THE COURT: Let's get the list of all these events.

Going to the Justice Department. What else, becoming acquainted with Mr. Smith, is that the second thing?

THE WITNESS: Yes.

THE COURT: What else?

THE WITNESS: Also concluding to definitely sell leases for Econo-Car and to sort of go into a different type operation as far as Nabcor was concerned.

Q Could you describe that, please?

A Well, my situation was critical. I had no money, I couldn't get cars, I couldn't get cars from Nabcor.

I didn't understand what was happening to me. Mr. Hennessey was having no problem getting cars, and I certainly was running into people who wanted to do business in leasing.

Of course, I couldn't get any financing, so I decided to go into the Justice Department and lay out everything and become an associate of Econo-Car.

Q Did you have any continued activities with General?

A Yes, I still was at General Auto Sales, operating out of my place. In fact, we developed such a relationship with Econo-Car that he would put all kinds of used cars down to our place for sale and sent down his person that he wanted to train in leasing, to take over in his place.

He was trained down at my end, and the fellow's name was Harold Deal.

Q Would you put down on the list that Judge Griesa is creating the Paul Batt Buick matter? Could that be one?

MR. KAPLAN: I think that was established that the car was reordered on January 22, 1968, and delivered on February 22, 1968. That is all in the record and we can stipulate that.

THE COURT: The date on Exhibit E is December 5,1967, the order date.

MR. KAPLAN: That was the order date and the delivery date is February 22, 1968.

THE COURT: I think this question was would you put on your list the event of the happening within a few days of what, Mr. Person?

MR. PERSON: About the Buick Electra episode where it was sold and taken back from under General.

THE COURT: Within a few days?

MR. PERSON: In his own mind. I am wondering if he is including that within these dates that he is trying to list for you.

THE COURT: He listed things going on within a few days of each other.

MR. PERSON: I am wondering if he includes this.

THE COURT: Would you ask the question specifically?

Q Would you include on the list of events that took place within a few days of your meeting with Mr. Smith at Clements-Gillogly Chevrolet the Buick Electra incident with Paul Batt Buick?

Is that part of the activities you intended to list?

A Paul knew about my association --

THE COURT: Answer this question. You are referring to the incident when you went and the car wasn't there?

MR. PERSON: Correct.

THE COURT: Your counsel asked if that occurred within a few days of getting acquainted with this Mr. Smith?

THE WITNESS: Yes, in this immediate period of time, yes.

Q You are not limiting it to one or two days, it is a broader period?

A I can't pinpoint it down. I just know that it occurred early and the reason that I can pinpoint it down relatively close is because of the decision going into the Justice Department at the time that I took it.

Because I thought that I would lose my Nabcor franchise because I was going in to have them investigate it.

THE COURT: Mr. Person, you must realize that the record shows that the Paul Batt Buick incident was December 5, 1967.

MR. PERSON: Only the order, sir.

THE COURT: That is the order date.

MR. KAPLAN: Not when this happened.

MR. PERSON: The car was delivered --

MR. KAPLAN: It was brought to Batt's premises, according to the witness's testimony.

THE COURT: What does Exhibit E refer to?

MR. KAPLAN: The left column says the date sold and refers to the date the car was delivered to the dealer.

THE COURT: Is that the second --

MR. KAPLAN: That is the second car.

THE COURT: Ordered December 5.

MR. KAPLAN: That is the initial order. In between there was a reorder when these gentlemen went to the dealer.

THE COURT: The exhibit is not clear. I thought that this car was ordered --

MR. KAPLAN: It is the same car.

THE COURT: Let's correct the exhibit. When was the reorder?

MR. KAPLAN: January 22, but it is for the same vehicle.

THE COURT: Is that right, January 22?

MR.PERSON: That is approximately the time.

MR. KAPLAN: Mr. Strimple's affidavit on the motion for summary judgment was that the Buick --

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MR. PERSON: Mr. Strimple would testify there was apparently no additional documents and that Paul Batt himself merely got another car on the same specifications submitted originally.

THE COURT: The thing is, Mr. Person, I don't know when we deal with this kind of list you list these things happening within a few days, but a few days in my mind is not a month.

MR. PERSON: That is why I wanted to clarify that, because I didn't think he meant to limit it to just a couple of days, but I can get on the point and I am developing it very quickly, and the witness mentioned he had some conversations with Mr. Batt of Batt Buick.

THE COURT: Why don't you establish if you can when the reorder was, because I was assuming something different from this Exhibit E.

When was the reorder, Mr. Strimple, of the Batt Buick car?

THE WITNESS: I think January 22.

THE COURT: All right.

THE WITNESS: According to Mr. Kaplan.

THE COURT: I will put a little asterisk on this Exhibit E, original order --

THE WITNESS: That was December, 1967.

THE COURT: I will put an asterisk "Reorder January 22, 1968."

This incident when you went and found the car wasn't there and you said you reordered, when was that?

THE WITNESS: January 22.

THE COURT: All right, January 22, 1968. Thanks a lot.

Q Mr.Strimple, did you have occasion to talk with Mr. Batt about your association with Econo-Car?

A Yes.

Q When did your communication occur, approximately?

A Between January, 1968, and February, 1968, somewhere in this vicinity.

Q Did any of this communication occur before January 22?

MR. KAPLAN: If your Honor please, I don't mean to belabor this, but this is certainly hearsay as far as

General Motors is concerned.

MR. PERSON: We are leading right up to the Econo-Car.

THE COURT: I will overrule that objection.

A Was it before January 22, was that the question?

Q Any part of your communications before.

THE COURT: What do you mean part of his communications?

Q Did you discuss Econo-Car with Mr. Batt prior to the reorder?

A Yes.

Q Could you state what you talked about with him?

A Told him what I was doing as far as going into leasing and the possibility of daily rentals and even asked him, for example, if he thought some of the small Buicks woud be a good daily rental car.

And what the resale value was coming back, because I was trying to get as much information totally as I could.

Paul was a good friend of mine. He was somebody that I could talk to. In fact, I had known Paul for a good many years before Nabcor ever came into the situation.

MR. PERSON: I would like to offer some documents which relate to the transactions by General with Clements-Gillogly. These are transactions, some of which are included on one of the exhibits from yesterday, Exhibit FF, which listed a series of transactions with General.

I have some documentation underlining some of these transactions.

THE COURT: All right.

MR. PERSON: It has been marked as Exhibit 531 for identification.

THE COURT: Do you want to offer that into evidence?

MR. PERSON: I would like to let Mr. Kaplan look at it first. I doubt if he will have any objection.

MR. KAPLAN: It will take me a couple of minutes.

THE COURT: All right.

MR. KAPLAN: No objection. They show we sold a lot of cars to this man.

MR. PERSON: I would like to give a copy to the witness.

go to Clements-Gillogly would you go personally or would you talk on the phone?

A Both.

Q Who would you generally talk to?

A Either Halstead or O'Donnell for getting cars.

Q Who was O'Donnell?

A O'Donnell was the used-car manager and it got to be that he would write the order.

Q These were new cars?

A Yes.

Q He was a salesman there?

A Right. He had the title of used-car manager, and he would write up the order for the new automobile.

Q Was there any particular reason why the used-car man would be writing your orders?

A This gets into the subterfuge we were talking about yesterday. I went strictly undercover as far as Nabcor was concerned at this particular time. I didn't want any mention of it. In fact, I was starting to order automobiles that I needed by telling him I wanted them, and they wrote the orders down and would ask me if I wanted them billed out to Econo-Car or if I wanted it billed out to General Auto.

Q What would you tell them?

A For cars I wanted, I told them to bill to me, General Auto.

Q What do you mean, cars you wanted?

A I would also give them specifications for a car that would be billed to Econo-Car for a particular lease.

Q I want to go back.

Were there cars that you were buying for General?

A Yes.

Q For General to resell to individuals; right?

A Yes.

Q And those are reflected on Exhibit 531?

A Right.

Q As we have seen, also on Exhibit FF?

MR. PERSON: Right, your Honor.

Q In going to order those you would talk sometimes to Mr. Halstead?

A Mostly it was O'Donnell who was the greater one that wrote the orders. It got to the point

I would pick up the phone and say, "This is Econo-Car. I want to order an automobile," and Chuck would write it up and then turn around --

Q It's Jim, you mean.

A You are right, Jim O'Donnell. He would call me and ask me how I wanted it billed.

Q These orders in Exhibit 531 that we are talking about, they have the name Jim O'Donnell as the salesman. Do you see that?

A Yes.

Q Does that mean you placed the orders with Jim O'Donnell?

A Yes.

Q These were in fact cars that you were buying for General to resell to individuals; right?

A Right.

Q These were not cars that were going to be used to lease for Econo-Car; right?

A Right.

Q Would you stick to these particular cars with me for just a minute; all right?

A Yes.

Q In calling Jim O'Donnell and placing these particular orders would you tell him whether or not you had to have them now or you could wait?

A Both, your Honor.

Q In other words, depending on the situation?

A Depending on the situation with the individual.

Q Would you tell him that if you had to have it now -- what would you say? Would you say, "I have a customer I have to have it now for"?

A I would say, "I need this car right away."

Q Would you tell him you needed it right away because your customer needed it right away, or something like that?

A Yes.

Q If you didn't need it right away you would say, "My customer can wait," and you would order it?

A I would say, "I have this particular car that I need five weeks from now. Put it on order for me."

Q If you asked for, say, a red car and you said, "I need it now," and they placed the locator service inquiry and they came down and they didn't have a red car but a brown car, what would you tell them?

A Depending on my customer.

Q Would you say, "I'll check with my customer"?

A If I could get the customer to accept brown instead of red, "I'll take it, otherwise order me a red one."

Q The cars you were buying for Econo-Car, they, of course, were not being bought for an individual customer, right?

A No, they were.

Q They were?

A Let me clarify.

When you establish a lease it is for an individual customer who specifies the equipment that he wants for a car that he's going to lease.

Q Do I understand that that was the nature of your operation with Econo-Car?

A Right.

Q You were not involved in daily rentals?

A I did not go into that.

Q These leases would be how long, typically?

A Normally two to three years.

Q Are you telling me that you would ask them to sell you a car that Econo-Car wanted to lease?

A Yes. Color and equipment.

Q Who would you place the orders with at Clements-Gillogly in that situation?

A Jim O'Donnell or Halstead, either one.

Q They were cars other than the ones reflected in this Exhibit 531; right?

A The ones that Econo-Car leases, yes.

Q What would you tell him? Would you tell him these were for Econo-Car?

A I had to.

Q You did?

A Starting this I had to go for Econo-Car. As the thing progressed they just asked me who I wanted to bill for it.

Q When you initially placed your order would you specify whether this was going to be a resale to an individual through General or a lease through Econo-Car; would you specify that?

A Originally they were all told that it was Econo-Car Leasing.

Q Are you telling me that, for instance, on this group of individuals that we have got here, they were told initially these were all for Econo-Car leases?

A The ones that started back in early 1968 were.

Q These are all '68 dates. You want to see the dates?

A Then they were all told. I thought some of them were '69. The first one here is '69.

Q Pafe 2 through 6, April, '68 through June of '68.

A They were definitely bought with subterfuge.

Q You are saying you told Mr. O'Donnell originally they were bought for Econo-Car?

A Right.

Q And then how did they happen to get billed to General?

A In the end, where we would pick the car up, go down, I had a conversation that I wanted the bill to General.

Q Whom did you have that conversation with?

A Jim O'Donnell.

Q What did you tell him?

A I wanted it billed to General.

Q That's all; there is no other conversation? Are you giving me the entire conversation or conversations on that subject?

A That question you just asked me is specifically relating -- when you say do I have any conversation, I had conversation with him but I'm trying to think of the specification.

Q That's what I want to know.

A We were talking at times about used cars, this sort of thing.

Q I asked you how it came about that these particular invoices were made out to General Auto Sales & Leasing.

A I requested them to be made out that way.

Q I want to know the complete conversation or conversations when you made such requests.

A I was talking to Jim on the terms of ordering our cars directly to get them in. He was aware what had happened in Nabcor and this sort of thing. I mean I don't know exactly where he became aware but he was. He got paid a commission on this. This was sort of turned over for